IMT Nuremberg Archives

H – 128

International Court of Justice

H0128 - 0002

Official transcript of the International Military Tribunal in the matter of the United States of America, the FrenchRepublic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, defendants, sitting at Nurnberg, Germany, on 10 May 1946, 1000-1300, Lord Justice Lawrence presiding.

THE PRESIDENT: Sir David, I understand there are some supplementary applications for witnesses and documents, which would probably not take very long to discuss. Is that so?

SIR DAVID MAXWELL-FYFE: My Lord, I have not actually received the final instructions. I can find out in a very shor t time. I will get Major Barrington up. I am told that is so.

THE PRESIDENT: The Tribunal, therefore, propose to sit in open session tomorrow until a quarter to twelve, dealing with the trial in the ordinary course, and then to take the supplementary applications at a quarter to twelve and then to adjourn into closed session.

SIR DAVID MAXWELL-FYFE: My Lord, we shall be ready for them at a quarter to twelve tomorrow.

THE PRESIDENT: Very well.

KARL DOENITZ -- Resumed

CROSS EXAMINATION -- Continued

BY SIR DAVID MAXWELL-FYFE:

Q Defendant, the first document that I want you to look at with regard t the Fuehrer commando order of the 18th of October, 1942, is on page 65 of the English document book and on page 98 of the German document book. It is document C-178, US Exhibit 544. You will see that that document is dated the 11th of February, 1943. That is some twelve days after you took over as commander in chief. You will see from the reference that it went to one SKL, little one. That is the international law and prize division of your operations staff, isn't it -- Admiral Eckhard's division?

A No. It is addressed to the first division of the naval command staff, that is, the operational division.

Q Yes. But it is --

A And it originates from Eckhard and goes to the first department -- the chief of that department.

H0128-0003

Q But I think I am quite right -- the reference about which I asked you -- one SKL, big once, little once -- that is Admiral Eckhard's department. That is the reference for Admiral Eckhard's international law department?

A No, no, no. It is the department in which Admiral Eckhard was also one of the officials. Admiral Eckhard was an official in that department.

Q And the third SKL in the next line is the first department as you said, isn't it?

A No. The third department of the SKL was collecting information which was sent in for the navy, and theyreported on it.

Q I note it was intelligence and press. Is that right or not?

A Yes. It was counter-intelligence and press.

Q Now, I just want you to help the Tribunal on three points in this document. You remember I asked you yesterday about the secrecy standard of the original Fuehrer order of the 18th of October. If you will look at the second paragraph you will see that it says:

"The first Fuehrer order of 18 October was given the protection of top secret merely because it is stated therein (1) that sabotage organizatio may have portentous consequences, and (2) that the shooting of uniformed prisoners acting on military orders must be carried out even after they have surrendered voluntarily and asked for pardon.

Do you see that?

A Yes, I have read it.

Q You agree that that was one of the reasons for giving the order top secrecy?

A This exchange of notes between Eckhard and the chief of the first department wasn't put before me. One thing which becomes quite clear from the initials which are in the book --

Q Is that the reason for you not answering my question? Do you agree that that is the reason for giving top secrecy to this document?

A But I don't know. I can't tell you that, because I didn't issue this commando order. It says in the commando order that these people had one time destroyed or killed prisoners. That is the way I had read it as the chief of the submarines, and on the other side --

H0128 - 0004

Q I shall give you one more opportunity of answering my question. You were commander in chief of the German Navy. Do you say that you are not able to answer this question: Is the reason stated in paragraph 2 of this document a correct reason for attaching top secrecy to the Fuehrer order of the 18th of October? You have this final opportunity of answering that question. Will you answer it or won't you?

A Yes. I want to. I consider it possible, particularly since the legal expert is of the opinion in this connection whether it is correct, because I haven't issued the order, and on the other hand it says in that order that these things were to be published in the army orders.

Q That was the next point. Thenext paragraph says that what is to be published in the army orders is the annihilation of sabotage units in battle, not, of course, if theyare shot -- as I would say, murdered -- quietly, by the SD after battle. I want you to note the next paragraph. The next paragraph raises the difficulty as to how many saboteurs were to be considered as a sabotage unit and suggests that up to ten would certain be a sabotage unit.

Now, if you look at the last paragraph -- I will read it to you quite slowly:

"It is to be assumed that security three is acquainted with the Fuehrer order and will therefore reply accordingly to the objections of the army general staff and the air force operations staff. As far as the navy is concerned, it remains to be seen whether or not this case should be used to make sure" -- note the next words -- "after a conference with the commander in chief of the navy that all departments concerned have an entirely clear conception regarding the treatment of members of commando units."

Are you telling the Tribunal that after that minute from Eckhard's department, which was to be shown to one SKL, your chief of Staff's department, that you were never consulted uponit?

H0128-0005

A. Yes, I will say that, and I will prove it with a witness, because he was responsible for the distribution chart and the passing on of this document, and he will state quite clearly that I did not receive a report on it.

Q. Admiral Wagner was your chief of staff?

A. Yes.

Q. All right, we will not occupy further time.

A. He was not my chief of staff; he was chief of this very department. He was chief of Departmentl, S.K.L., to which this order was directed. He will state quite clearly that no report was made to me. Very clear conditions these.

Q. Well, I will leave that, if you say that you have not seen it, and I will ask you to look at document PS-551.

SIR DAVID MAXWELL-FYFE: My Lord, I will pass the Tribunal a copy. This is Exhibit 551, and it was put in by General Taylor on 7 January.

Q. Now, that is a document which is dated 26 June 1944, and it deals with the Fuehrer order, and it says how it will apply after the landing of Allied forces in France, and if you will look at the distribution, you will see that Number Four is to the OKM, 1, S.K.L. That is the department on which you were good enough to correct me a moment ago. Now, did you, were you shown that document, which says that the Fuehrer order is to apply to commando units operating outside the immediate area in Normandy? Were you shown that document?

A. No, that was not shown to me under any circumstances; that was quite right. The navy was not in any way concerned with the matter.

Q. You told me yesterday that you were concerned with the matter and that you had small boats operating in the Normandy operations. That is what you told me yesterday afternoon. You have changed your recollections since yesterday afternoon?

A. No, not at all. Submarines were floating on the water, but they had nothing to do with commandos at the front ashore. This document -- and I do know if it is the original of the 1, S.K.L. because I can not see the initial but anyway it shows, and I am convinced, that it was not put before me because it was not a matter for the navy.

H0128 - 0006

Q. I see. Will you just look at document 537-PS, which is dated 30 July 1944.

SIR DAVID MAXWELL-FYFE: My Lord, that is US Exhibit 553, also put in by General Taylor on 7 January.

Q. The Sergeant-Major will point to the place. That is the document applying the commando order to military missions, and you will see again that the distribution includes OKM, Department S.K.l. Did you see that order?

A. Yes, I can see it.

Q. Did you see if at the time that it was distributed, at the end of July 1944?

A. It is quite certain that this order was not put before me because again the navy was not at all concerned with it. The Navy had nothing to do with combatting bandits.

Q. I want you now just to look very quickly, because I do not want to spend too much time on it, at 512 PS.

SIR DAVID MAXWELL-FYFE: My Lord, that is US Exhibit 546, which was also put in by General Taylor on 7 January.

Q. Now, that is a report dealing with the question of whether members of commandos should not be murdered for a short time in order that they could be interrogated, and the question is whether that is covered by the last sentence of the Fuehrer order, and I call your attention to the fact that it refers, with regard to interrogations, in the second sentence:

"The importance of this measure was proven in the case of Glomfjord, two-men torpedoes at Trondheim, and glider planes at Stravenko."

A. I can not find it just now.

Q. It is 512-PS.

THE PRESIDENT: Sir David, perhaps you ought to read the first sentence.

SIR DAVID MAXWELL-FYFE: If Your Lordship please.

A. This document is of 1942. At that time I was an officer of submarin on the atlantic Coast in the Bay of Biscay. I do not know this paper at all.

Q. That is an answer, but it is 14 December 1942, and the point is put up, which is raised in the first sentence which My Lord has just directed me

H0128-0007

read, "Top Secret: According to the last sentence of the Fuehrer order of 18 October, individual saboteurs can be spared for the time being in order to keep them for interrogation." Then follows the sentence I have read. That was the point that was raised, and what I was going to ask you was, Did that point come up to you when you took over the commandership in chief of the navy in January 1943? Just look at the last sentence.

"The Red Cross and the BDS protested against the immediate carrying out of the Fuehrer order."

A. I beg your pardon, but I still can not find the place where this is supposed to be. I have not found that last sentence. Where is it?

THE PRESIDENT: Our translation says "after the immediate carrying out..".

SIR DAVID MAXWELL FYFE: "After", My Lord: I am so sorry. It is my fault. I am greatly obliged to Your Lordship. "Protested after the immediate --" I beg Your Lordship's pardon. I read it wrong.

A. That is of December 1942.

Q. It is only six weeks before you took over.

A. Yes, that is right, but I do not know this teleprint, and it may not be Red Cross. It probably is Reiko See. BDS is probably the SS leader for Nroway.

Q. But the point that I thought might have had some interest for you was the two-man torpedoes. I thought that might have been referred to you as a matter of navy interest. However, if it was not I will come to a document that is after you took over. Give the defendant 526-PS, on 10 May 1943.

SIR DAVID MAXWELL FYFE: My Lord, that is US 502, and was put in by my friend Colonel Storey on 2 January.

Q. You see that that is an account -- it is from the defendant Jodl's department, and it is annotated for the defendant Jodl's department, about an enemy cutter which carried out an operation in the Shetlands, a cutter of the Norwegian navy, and it gives its armament, and it says that it was an organization for sabotaging strong points, battery positions, staff and troop billets, and bridges, and that the Fuehrer order was executed by the SD. That was a cutter which was blown up by the Norwegian navy, I suppose after they were

H0128 - 0008

attacked, and ten prisoners were murdered. Was that brought to your attention?

A. This was put before me during an interrogation, and on that occasion I was asked whether I had not had a telephone conversation with Field Marshal Keitel. It was later on ascertained that it was the army commander who got in touch with the OKW. It was a matter for the army commander and the SD, not for the Navy.

Q. If you deny that you ever heard about that, will you turn to page 100 of the document book.

SIR DAVID MAXWELL-FYFE: My Lord, it is page 67 of the British document book.

Q. That is a summary, a summary of the trial of the SD--

A. Where is it? I can not find it.

Q. Page 100, I have told you. If you will look for it, I think you will find it. It is page 67 of the English, if you prefer to follow it in that

Now I will explain to you; I think you have read it before because you have referred to it. That is a summary by the Judge Advocate at the Trial of the SS men of the evidence that was given, and I just want to see that you have it in mind.

If you will look at Paragraph 4, you will see that they set out from Verreck, in the Shetlands on the naval operation for the purpose of making torpedo attacks on German shipping off the Norwegian coasts and for the purpose of laying mines.

Paragraph 5: "The defense did not challenge that each member of the crew was wearing uniform at the time of capture, and there was abundant evidence from many persons, several of whom were German, that they were wearing uniforms at all times after their capture."

Now, you mentioned this yesterday. You see that in Paragraph 5 that:

"Deponent states that the whole of the crew was captured and taken on board a German naval vessel which was under the command of Admiral von Schrader, the Admiral of the West Coast. The crew were taken to Bergen, and

H0128 - 0009

there they were interrogated by Lieutenant H.P.K.W.Fanger, a naval lieutenant of the reserce, on the order of Oberkapitan Egon Drascher, both of the Naval Intelligence Service, and this interrogation was carried out upon the orders of the staff of the Admiral of the West Coast. Lieutenant Fanger reported to the officer in charge of the Intelligence Branch at Bergen that, in his opinion, all members of the crew were entitled to be treated as prisoners of war, and that officer in turn reported both orally and in writing to the Sea Commander Bergen and in writing to Admiral of the West Coast," and that is Admiral von Schrader.

Now, I want to read you the one sentence which, in view of that, I do not think you will think is taken out of context of the evidence given by Lieutenant Fanger at this trial.

H0128 - 0010

He was asked:

"Have you any idea at all why these people were handed over to the S. D.?"

In answering that question I want you to tell me who was responsible for their being handed over. This was your Officers, your outfit; that was the General in Command of the Norwegian Coast, Admiral von Schrader in command of this section, and whose people captured the crew. That is your own officers. Is it true what you told the Court yesterday that the crew were captured by the S. D? Havy you any reason to believe Lt. Fanger is not telling the truth?

THE PRESIDENT: What is that you were quoting from then?

SIR DAVID MAXWELL FYFE: It is the shorthand notes taken on the trial of the S. S.

THE PRESIDENT: Has it been admitted?

SIR DAVID MAXWELL FYFE: No, My Lord, it has not been, but it was within Article 19.

DR. KRANZBUEHLER: I don't know the document which has been used, and may I please have it. Shorthand notes are being used which are unknown to me and according to the decisions of the Tribunal regarding cross examinations they must be given to me when the cross examination is carried out.

SIR DAVID MAXWELL FYFE: My Lord, it is with great respect, but this point arose yesterday when the defendant made certain statements with regard to Admiral von Schrader. I am questioning these statements and the only way I can do it is by the use of documents which I did not otherwise intend to use. I shall, of course, let Dr. Kranzbuehler see them in due course.

THE PRESIDENT: Have you a copy of the German? That was to have been given the Germans, that evidence.

SIR DAVID MAXWELL FYFE: I have only the English transcript and I am willing to let Dr. Kranzbuehler see it, but it is all I have.

THE PRESIDENT: Have you got any other copy you can hand him?

SIR DAVID MAXWELL FYFE: No, I only was sent one copy.

THE PRESIDENT: After you are through with it, will you please hand that copy to Dr. Kranzbuehler?

H0128 - 0011

SIR DAVID MAXWELL FYFE: Yes sir.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL FYFE:

Q Now, have you any reason to suppose, defendant, that your Officer, Lieutenant Fanger, is not telling the truth when he says that these men were captured by Admiral von Schrader.

A I have no reason to question it because the whole matter as such is completely unknown to me. I have already stated that neither I, the Supreme Commander of the Navy had reports on the whole story and yesterday I told you I could only question that it happened, and it says here in paragraph 6 they were captured on an Island; that they were not captured by the Navy, that that they were captured by a Section of the Police -- and if you will let me finish -- that consequently Admiral Von Schrader, since they were not Navy prisoners but police prisoners, handed them back to the police, and that is why I did not receive a report. I certainly can't furnish the details of this story, because, as I have stated, I wasn't given a report of it at the time.

Q That is the point I will get to in amoment. It nowhere states in this document that they were captured by the police, but in fact that they were captured by the forces under Admiral von Schrader, who attacked this island to which this boat was moored.

A But I don't know that. It says here in the document the police raided the island but it was not clear for what purpose they raided it, and it is also quite clear that afterwards they reached the boat and that is quite clear, but they remained police prisoners as the police or police guards had captured them there, and that is how I imagine the story should be.

Q I just asked you, your own Officer, Lieutenant Fanger, says they were captured by Admiral von Schrader's troups, and you say if Lieutenant Fanger says that you have no reason to believe his is not telling the truth, is that right?

A Yesterday I accepted that, considering von Schrader's personality and Lieutenant Fanger said this, then it hasbeen different, but, of course, I don't know.

Q Will you look at the end of paragraph 8, the last sentence:

H0128 - 0012

"There was an interview between Blomberg of the S.S. and Admiral von Schrader", and then the next sentence:

"Admiral von Schrader told Blomberg that the crew of this torpedo boat were to be handed over in accordance with the Fuehrer's orders to the S.D.", and that they were handed over, and the Officers ofthe S.D., who carried out this interrogation order at the trial; that after the interrogation he was of the opinion that the members of the crew were entitled to be treated as prisoners of war, and he so informed his Superior Officer."

Despite this report and recommendations to the Superior Officer the crew were dealt with under the Fuehrer's order and executed, and it describes how they were shot and their bo dies secretly disposed of. Do you say you never heard about that?

A I did not. I will state and I can prove it with my witnesses, that if the officers of the S. D. imprisoned these people then they ought to have reported it to a Superior Officer and his authority would have been final.

Q You see you already take the position that the Navy had interrogated them; the Navy Intelligence said they should be treated as prisoners of war, and Admiral von Schrader said they should be handed over to the S.S. and that the SS examined them and said they should be treated as prisoners of war, and despite that, they were murdered. And you say you knew nothing about it? Did your Kapitaen Zur See Wildemann say anything to you concerning this? (Spelling) W-i-l-d-e-m-a-n-n. Let me try to bring him to your recollection. At this time he was an officer on the staff of Admiral von Schrader and dealt with this matter. Now, Kapitaen Wildemann, and I suppose we should assume, unless you know anything to the contrary, he is a trustworthy officer, he says: "I know that von Schrader made a written report on this action, and I know of no reason why the handing over of the prisoners to the S. D. should not have been reported on."

Do you still say you never got any report from von Schrader?

A Yes, I do say that; that I did not receive any report and I am equally convinced that the Supreme Command of the Navy, and I have witnesses who will prove it, did not receive it either, and where the report went I don'tknow. Admiral von Schrader was of the Navy and maybe it went to the

H0128 - 0013

Army Command, if a report was made at all. At any rate the Supreme Command of the Navy did not receive a report on this particular matter, and that is why, that these people right from the beginning were apprehended and prisoners of the S.D. Otherwise, Ithink Admiral von Schrader would have reported it.

Q Before you make any further statement, I would like for you to have in mind something further that Kapitaen Wildmann said; which you know probably quite well: "After the capitulation Admiral von Schrader many times said the English would hold him responsible for handing over the prisoners to the S. D.", and Admiral von Schrader was under orders proceeding to England as a prisoner when he shot himself. Did you know Admiral von Schrader shot himself?

A I have it here.

Q Did you know he was worried about being held responsible for this order?

A No, I did not know theleast thing about that. I only heard about it here.

Q Are you still telling the Tribunal that Admiral von Schrader made no report to you?

Do you remember a few days after the capture of this M. T. B. Admiral von Schrader received a Ritterkreuz?

A Yes, but that is not connected with this matter at all. He did not furnish a report about this matter and he did not go to Berlin to get his Ritterkreuz either, as I remember.

Q Two other officers, Oberleutnant Neerly and Seeoberfaehnrich Boehm were decorated, and in the recommendations and citations, the capture of this M. T. B. was given as the reason for this decoration. You say you knew nothing about it?

A I knew nothing about it and I couldn't have known about it, because the decorating of these people would have been carried out by their Superiors and not me. The Supreme Command of the Navy did not receive a report in connection with this affair. I have that much confidence in my Supreme Command and my witnesses willprove it. Yes, they failed to receive it, because I ought to have received it in the Supreme Command.

H0128-0014

Q My final question, and I leave this subject: Admiral von Schrader was your junior officer, and according to you, a very gallant officer. Do you want the Tribunal to understand that the responsibility which broke and made Admiral von Schrader commit suicide was his responsibility , that he never consulted you and you were taking no responsibility for his acts? Is that what you want the Tribunal to understand?

A Yes, that I shall say under my oath, because if in fact Admiral Schrader committed suicide because of this event, then he made a mistake, because naval personnel were not to be treated this way. He must have acted the wrong way. I did not receive the least indication of that affair.

THE PRESIDENT: Sir David, will you ask the witness what he meant when he said that von Schrader was not directly under the Navy? He was under Admiral Celiax, wasn't he, who was on leave at this time?

THE WITNESS: I had said that he was not directly under the Supreme Command of the Navy in Berlin. If any reports went out -- if von Schrader made a report, then that did not go directly to me but to his superior who was in Norway.

Q And that immediate superior was Admiral Celiax who was on leave -- but omit the leave for the moment: His immediate superior was Admiral Celiax?

A Yes.

Q I want to put it perfectly fairly: Do you remember that for operations in Norway Admiral Celiax was acting under the Commander -- correct me if I am wrong -- was it General von Falkenhorst. Perhaps you can help me. Do you remember that this Admiral was acting under the Commander-in-Chief in Norway so that you will tell the Tribunal--

A Yes, as far as territorial relations were concerned, he was not under the Supreme Command of the Navy. Admiral Celiax, he was under the Army Commander for Norway, General von Falkenhorst, but I can only state that if these are the circumstances under which Schrader committed suicide because of this affair, then, a mistake was made when these people who were naval personnel and had been sent into a naval action were not treated as prisoners, but as I said, I don't know. Then there was a local error.

Q But at any rate you say that despite these awards and decorations

H0128-0015

for this action you as Commander-in-Chief of the Navy knew nothing about it at all. That is what you say?

A The Knight's Cross was given to Schrader for something quite different. I awarded it. And as far as the awards to these other people are concerned, I don't know anything about that, and it has nothing to do with me, because it was done by their immediate superior. Whether these awards were in fact connected with the story, that is something I don't know -- or whether there weren't other reasons for it. I still cannot imagine and don't believe it that a man like Admiral Schrader should have treated naval personnel in this manner and it doesn't say in the document either that they were being killed during a naval action but captured on an island. And it seems peculiar that the Supreme Command of the Navy should not have received a report about it, namely, that being an order and that the Army report had mentioned the story of this Commando order -- all these matters are against your version. I can't personally form an opinion of this affair and don't know it.

Q Defendant, I am not going into details. You may take it from me that the evidence at the trial has been that this cutter was attacked by two naval task forces. If Dr. Kranzbuehler finds I am wrong I will be happy to admit it. But we will pass on to another subject. Time is going.

Would you turn to page 105 of the Document Book?

A If that is the case, then I can only tell you that there was a clear-cut violation of an order in this case, something of which the Supreme Command of the Navy was not informed.

Q I want you to come to this next point, 105 in the German, 71 in the English Document Book. Now we needn't have any trouble about this document because it is signed by you and it is a memorandum about the question of more labor for shipbuilding; and you are probably very familiar with it. But will you look at the first sentence?

A I beg your pardon, but what page is it?

Q Page 105, Exhibit GB-211.

A Whatis the number in the English?

Q In the English it is 71.

H0128-0016

A Yes.

Q Now, if you would look at the first sentence, "Furthermore, I propose reinforcing the shipyard working party by prisoners from the concentration camps." 'I don't think we need trouble with coppersmiths, but if you will look at the end of the document, the very last you will see Item 2 of the summing up reads "Twelve thousand concentration camp prisoners will be employed in the shipyards as additional labor. Security service agrees to this.

Now, that is your document, so --

A Yes.

Q So we may take it that you were familiar with the fact of the existence of concentration camps?

A I have never denied it.

Q And I think you went further, didn't you, when asked about this on the 28th of September? At that time you said: "I generally knew that we had concentrations camps. That is clear.

"Question: From whom did you learn that?

"Answer: The whole German people knew that."

Don't you remember saying that?

A Right. The German people knew there were concentration camps, but they didn't know anything about the conditions and methods therein.

Q It must have been rather a surprise for you when the Defendant von Ribbentrop said he only heard of two -- Oranienburg and Dachau? It was rather a surprise to you, was it?

A No, not at all, because I personally -- myself -- only

H0128-0017

knew about Dachau and Oranienburg too.

Q But yousay here you knew there were concentration camps. Where did you think you were going to get your labor from? What camps?

A From these camps.

Q Did you think that all your labor was going to be German or that it was going to be partly foreign labor?

A I didn't think about that at all, and I should like tomake a statement now, about how these demands occurred.

At the end of the war I had had the task in the Baltic Sea to organize large-scale transports. Gradually there was the necessity of moving masses of poor refuges, hundreds and thousands of them, from eastern and western Prussia. They were at the sea-coast and starving and suffering from epidemics and shot at, and I tried to bring them to Germany. For these reasons I was looking for merchant ships which weren't actually under my jurisdiction , and in this connaction I discovered that eight ships which had been ordered in Denmark -- that out of those eight, seven had been destroyed by saboteurs just before being completed. Subsequently I called a meeting of all departments concerned with those ships and asked them, "How can I help you?" What can I do so that we can get ships more quickly and so that damaged ships may be repaired more quickly?"

It was on that occasion that these people who were not members of the Navy were making suggestions to me, and amongst these suggestions was one for the acceleration of work repairs and such, that concentration camp prisoners should be used. The clear-cut reason which was given was that such employment would take place under very good conditions; they would be excellently fed and they would like that type of work.

Since I knew nothing about conditions in concentration camps, it was a natural matter for me that amongst the suggestions --

Q (Interposing)

A -- please allow me to finish. -- that in my collections of proposals I included this particular one, particularly since there would be no deterioration in the condition of these people, since no doubt their feeding would improve.

So that you could have made an accusation against me according to which these people had been better fed under me, I would have turned them down. I had not the slightest reason for any such act. I didn't know anything about conditions.

H0128-0018

Q I am sure we are grateful for your explanation. But I just want you to tell me, after you had proposed that you should get 12,000 people from concentration camps did you get them?

A I don't know. I didn't concern myself with that. After the meeting I had a memorandum prepared that was submitted to the --

Q Keep to the answer. The answer is that you don't know whether you got them or not, assuming that you did get them.

A I didn't get these people at all. That wasn't any of my concern and consequently I don't know whether these people who were responsible for the whole affair did receive that increase of workers or not.

Q But you held a position of some responsibility; if you get 12,000 people from concentration camps into the ship-building industry, they would have to work alongside people who weren't in concentration camp would they not?

A But certainly.

Q Are you telling this Tribunal that when you ask for and you may have gotten 12,000 people out of concentration camps, who work alongside people not in concentration camps, that the conditions inside the concentration camps remain a secret to the other people and to all the rulers of Germany?

A First of all, I don't know whether these people arrived; secondly, if they did come, then I can well imagine that they had orders not to talk; and thirdly, I don't even known what camps these camefrom, whether they weren't people of a certain strength or ability of output of work, and were in quite different camps. At any rate, I wasn't concerning myself with the carrying out or the methods of the whole proposal, because it was none of my business.

I have prepared proposals for the departments outside the Navy, concerned in the matter, and I acted on their behalf so that the question of repairs was being attended to. It was just my duty concerning the refugee transports which were at that time coming under my jurisdiction. I would do exactly the same today. That is how it happened.

H0128 - 0019

Q. Well now, just look a little down the document to the fourth paragraph, after it says: Translator's note. If you will look at the English, the paragraph beginning: Since elsewhere. Have you found that? This is after, as you have told us, you express your worry about the sabotage in the Danish and Norwegian shipyards. I just want you to look at your proposal to deal with saboteurs. "Since elsewhere measures for exacting atonement, taken against whole working parties amongst whom sabotage occurred, have proved successful and, for example, the shipyard sabotage in France was completely supressed, possibly similar measures for the Scandinavian countries will come under consideration." That is what you were suggesting, Defendant, was a collective penalty against the whole working party where any sabotage occurred; isn't that so?

A. Yes. I have to give an explanation in that connection.

Q. That is all right. But otherwise, it is so?

A. First during that meeting departments outside of the Navy which were concerned with shipyards stated that in France sabotage had been prevented by introducing certain reprisals. The affidavit of an officer who participated in that meeting and who composed the record, or these brief memoranda, now proved to me that the conception of reprisals at the time was the taking away of additional rations which these people were issued, and this was to come to Nroway and Denmark. That is what this means. And, secondly, I told these people, "It is impossible that we, with our foreign currency, and our material, could be building ships there. If these ships are mearly finished, then that sabotage which the workers assisted has destroyed them now." The answer I received was that it was the only possibility to separate these people from those who were carrying on sabotage.

Q. The whole of this explanation that you have given us is in this document which is in front of the Tribunal. Have you anything to add to what is in the document?

A. That is quite right, and I have to add this: It meant that these workers were to be treated exactly as ourselves. They, too, were also housed in barracks, and the Danish and Norwegian workers wouldn't have suffered in any way.

H0128-0020

Q. I want you to look at one more sentence: "By the employment of the working parties concerned, that is concentration camp workers, their output would not only be increased to a hundred per cent but the cessation of their previously good wages might possibly result in their being considerably deterred from sabotage." That fairly represents your view of the way to treat Norwegian and Denish workers, does it not?

A. This was a measure of safeguarding so as to get control of the sabotage.

Q. Well now, just turn back to Page 70 of the English document book, Page 103 in the German document book. This is an extract from the minutes of a meeting between you and Hitler on the 1st of July, 1944, signed by yourself. Have you got it?

A. I have got it.

Q. Concerning the general strike in Copenhagen, the Fuehrer says: "The only weapon to deal with terror is terror. Court martial proceedings create martyrs. History shows that the names of such men are on everybody's lips whereas there is silence with regard to the many thousands who have lost their lives in similar circumstances without court martial proceedings, silence with regard to those who are condemned without trial." Do you agree with that statement of Hitler's?

A. No.

Q. Then why did you distribute it to Operations Department for circulation if you didn't approve of it?

A. I didn't agree to the procedure, but it also contains certain thoughts of the Fuehrer. What is more, this was not an agreement between the Fuehrer and myself; it was minutes of the meeting which the officer who was accompanying me had made regarding the military situation, and it contained certain points ---

Q. Will you try and answer my question? It is a perfectly simple one. It is, why did you distribute that to Operations for circulation? What was there in these few lines that was of interest to your officers? What did you think was valuable for your officers to know in that dreadful piece of

H0128 - 0021

savagery that I have just quoted to you?

A. It is very simple to say. The officer who wrote the record included this in order to inform our departments that there was a general strike on in Copenhagen. That is why that one paragraph from that long discussion was introduced, so that the departments knew that there was a strike on in Copenhagen. That was the whole reason.

Q. I am suggesting to you, Defendant, that you circulated that to your officers to inculcate ruthlessness among them. That is my suggestion. What do you say to that?

A. To that I say that is perfectly wrong. I can tell you also that I didn't even hear that statement made by the Fuehrer, but it is perfectly possible that it was taken down by the accompanying officer, Wagner, for the reason which I have just given you, so as to warn these people that there was a general strike in Copenhagen.

Q. Now, Defendant, I am not going to argue with you about your knowledge of documents you have signed. I have questions to do with documents you haven't signed, so let's pass on to the next one.

A. I know the document. I know it because I have signed it.

Q. Page 69, that is Page 4 in the English document book or Page 102 in the German document book, the minutes of the conference on the 19th of February, 1945, between you and Hitler --

A. No, that is not right.

Q. No, I beg your pardon. It is an extract from the minutes of the Hitler conference on the 19th of February, 1945; and then there is a note --

A. No. It says here: Participation of the Supreme Commander of the Navy During the Military Discussion. There

H0128 - 0022

wasn't any special conference.

Q I didn't mean to say "special". I said the Hitler conference.

A Yes.

Q On the 19th. Now the first sentence of paragraph 1 says: "The Fuehrer is considering whether or not Germany should renounce the Geneva Convention." The last sentence is: "The Fuehrer orders the Commander in Chief of the Navy to consider the pros and cons of this step and to state his opinion as soon as possible." And if you look down on the next minutes of the conference on the 20th of February, which is headed: Participation of C and C Navy in a Hitler conference on 20 February at 1600 hours, it reads as follows: "The C and C of the Navy informed the Chief of the Armed Forces Operations staff, General Jodl, and the representative for the Minister for Foreign Affairs at the Fuehrer's headquarters, Ambassador Hewel, of his views with regard to Germany's possible renunciation of the Geneva Convention. From a military standpoint there are no grounds for this step as far as the conduct of the war at sea is concerned. On the contrary, the disadvantages outweigh the advantages. Even from a general standpoint it appears to the Commander in Chief of the Navy that this measure would bring no advantage."

Now look at the last sentence: "It would be better to carry out measures considered necessary without warning and at all costs to save face with the outer world." That means, put in blunt and brutal language: "Don't denounce the convention but break it whenever it suits you", doesn't it?

A No, that is not true.

Q What does it mean? Let's take it word for word. "It would be better to carry out measures considered necessary"; aren't these measures contrary to the rules of the Geneva Convention?

A I would have to make a statement in that connection.

Q Answer my question first and then make a statement. You have done it before, but try to answer my question. "These measures considered necessary", if they don't mean measures contrary to the terms of the Geneva Convention what do they mean? Answer that question first.

H0128-0023

A They are measures against our own troops. I have heard -- I was told that the Fuehrer had said that because in the West the front was not solid and because he had heard that American and British propaganda was making men desert and run off that he intended to leave the Geneva Convention, so I stated before my staff: "How can you think of such an idea, to throw overboard a century-old international law." Maybe that statement was made, that I said: "Let's take measures which are necessary", but no concrete measures were thought of in that connection. Nobody thought of any concrete measures and none was introduced. What my own feelings were regarding treatment of prisoners of war, that can best be heard from those British prisoners of war who were in my camps. And that is the situation regarding this affair. In other words, the Chief of all the Armed Forces departments fought against the renouncing of the Geneva Convention. They were not for it.

Q Is that your total explanation of "to carry out measures considered necessary"? You have nothing else to add on that point? Well, I shall pass to another one. Do you remember saying to Dr. Kranzbuehler yesterday that when you became Commander in Chief of the Navy that the war was purely a defensive war? Do you remember saying that to your counsel yesterday?

A Yes.

Q That wasn't your fault, was it? It wasn't your fault that it remained limited to the countries engaged when you took over? Do you remember your advice to Hitler on the meeting of the 14th of May, 1943?

A No.

Q Well, let me just suggest to you, do you remember the discussion about the Sea Transport for Sicily and Sardinia? Do you remember having a discussion on that and do you remember you warning Hitler that your U-boat losses were fifteen to seventeen U-boats a month and that the position as to the future of the U-boat war looked rather gloomy? Do you remember that?

A Yes, I do.

Q And do you remember Hitler saying: "These losses are too heavy. This can not go on." And did you say to Hitler: "Now our only small outlet

H0128-0024

for sorties is the Bay of Biscay and control of this involves great difficulties and already takes up ten days of the U-boats' passage time. The best strategic solution lies in the occupation of Spain, including Gibraltar." And did Hitler remark: "In 1940 this would still have been possible with the cooperation of Spain, but now, and against the will of Spain, our resources are no longer adequate." Do you remember suggesting that to Hitler on the 14th of May, 1943 and Hitler saying his resources were no longer adequate?

A I don't think that I had proposed to the Fuehrer that we should occupy Spain. I described the situation very clearly and I said that we should be blockaded in that small corner of the Bay of Biscay. I also said conditions would be quite different if there was more room; but that doesn't contain a suggestion that, under the defensive situation, we should propose to occupy Spain.

Q Let us get it clearly, I am quoting you now from Admiral Assmann's headline diary, a verbatim translation.

SIR DAVID MAXWELL FYFE: The original is in London, My Lord. I will get the copy and put it in and certify it. This point again only arose yesterday and I haven't got it. I will have the original given and I will show Dr. Kranzbuehler this entry.

These are the words that Admiral Assmann records:

"Doenitz continues: 'Now our only small outlet for sorties is the Bay of Biscay and control of this involves great difficulties and already takes up ten days of the U-boats' passage time.'

H0128 - 0025

Doenitz says, "The best strategic solution lies in the occupation of Spain, including Gibraltar."

Did you say that "the best strategic solution lies in the occupation of spain, including Gibraltar"?

A That's possible. If that's the wording you've got there, it's possible that that's the way I said it.

SIR DAVID MAXWELL FYFE: My Lord, I was going to pass on from these general --

THE PRESIDENT: Sir David, have you passed altogether from C-158 on page 69?

SIR DAVID MAXWELL FYFE: My Lord, I had, but I can easily return to it, My Lord.

THE PRESIDENT: Well, the second sentence in paragraph 1 appears to have some bearing upon the answers which the defendant has given.

SIR DAVID MAXWELL FYFE: My Lord, I am sorry, but I tried to cut it as short to the bare bone, and I am sorry if I omit matters.

BY SIR DAVID MAXWELL FYFE:

Q Defendant, would you return to the last document, C-158. That's the one about the Geneva Convention; it's page 69 of the English book; 102 of the German, whichever you're following. The Sergeant Major will help you to find it.

Now, if you'll look at the first paragraph, after the sentence I read, "The Fuehrer is considering whether or not Germany should renounce the Geneva Convention", it goes on: "Not only the Russians, but also the Western Powers, are violating international law by their actions against the defenseless population and the residential districts of the towns. It appears expedient to adopt the same course in order to show the enemy that we are determined to fight with every means for our existence, and, also, through this measure to urge our people to resist to the utmost."

Were not these, that are referred to there as the same course, -- were not these the measures considered necessary to which you were referring in the second minute?

A The witness who has composed these two records will give an exact

H0128 - 0026

and accurate explanation regarding where and when this information was given. I, personally, only received the information -- and I think Reichsmarshall Goering has talked about it -- according to which the Fuehrer was upset becaus our western front wasn't holding. It was so because these people liked to become American and English prisoners of war; and that was the cause of the whole affair, and that was the original information which I've received. As far as these records, compiled by an officer or some officers whom I don't know, is something I can't talk about. He could tell you in more detail how these things happened. I can't tell you any more than that under my oath. It was my thought that the renunciation of the Geneva Convention was in principle a great mistake and was wrong. My feelings regarding the treatment of prisoners of war is something I've just mentioned and everything else is wrong.

Q I want to make quite clear the point that the Prosecution put against you as this: That you were prepared not to denounce the Convention, but you were prepared to take action contrary to the Convention and say nothing about it; and that's what I suggest is the effect of the last sentence, especially when read with these words in the first paragraph.

My Lord, I am now going to pass to the war at seas.

A I beg your pardon, but may I say one more word? If you introduce measures against inclinations to run over to the enemy, and if you introduce measures which would have a scaring-off value, then any secret background to the matter is perfectly all right; it is something I've never thought of. To the contrary, it was my own thought in my considerations: "How can one leave the Geneva Convention?" And that's what I was expressing.

SIR DAVID MAXWELL FYFE: The document is clear.

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken.)

BY SIR DAVID MAXWELL FYFE:

Q Defendant, did you know that on the first day of the war the Navy put up to the Foreign Office that the maximum damage to England could only be achieved with the naval forces you had, if U-boats were permitted the

H0128 - 0027

unrestricted use of arms without warning against allied and neutral shipping in a wide area?

From the first day of the war, did you know that the Navy put that up to the German Foreign Office?

A I do not believe that the naval warfare command at the time sent m a memorandum of that kind, if it was ever made.

Q Now, I want you to try and remember because it's quite important. You say that the naval command never informed the flag officer of U-boats that that was their view of the war?

A I don't know. I cannot remember that the naval warfare command ever told me about such a letter to the Foreign Office. I don't believe they did; I can't say.

Q Well, then, perhaps it would assist your memory if you looked at the letter.

My Lord, this is document D-851 and it will become Exhibit No. GB-451.

A No, I do not know this paper.

Q Now, I just will take it by stages because, of course, you wouldn't know the first part, but I'll read it to you and then we'll look at the memorandum together.

"Submitted respectfully to the Secretary of State" -- that would be Baron von Weizsaecker -- "with the enclosed memorandum.

"The Chief of the Operational Department of the Naval Command, Captain Fricke, informed me by telephone that the Fuehrer was already dealing with this matter. The impression had, however, arisen here that the political connections had again to be gone into and brought to the Fuehrer's notice anew. Captain Fricke had, therefore, sent Lt. Commander Neubauer to the Foreign Office in order to discuss the matter further." That's signed by A lbrecht on the 3rd of September 1939.

Then there is the memorandum:

"The question of an unlimited U-boat war against England is discussed in the enclosed data submitted by the Naval High Command.

"The Navy has arrived at the conclusion that the maximum damage to England, which can be achieved with the forces available, can only be

H0128 - 0028

attained if the U-boats are permitted an unrestricted use of arms without warning against enemy and neutral shipping in the prohibited area indicated in the enclosed map.

H0128-0029

"The Navy does not fail to realize that:

"a. Germany would thereby publicly disregard the agreement of 1936 regar ding the prosecution of economic warfare;

"b. a military operation of this kind could not be justified on the basi of the hitherto generally accepted principles of international law."

And then it goes on to deal with it.

Are you telling the Tribunal that the defendant Raeder never consulted or informed you before these data were submitted to the Foreign Office?

A No, he did not do so, and it can be seen here, because it was a memo randum of the Chief of the Operational Department to the Secretary of State, tha is to say, a negotiation between Berlin and the Foreign Office in which the fron commander, who was at the coast and was in charge of the U-boats, was not partic pating.

I don't know that letter.

Q Well, are you saying that you went on with your activities at the be gining of the war without knowing that this was the view of the Naval High Comma

A I did not have any knowledge of this letter. I have said already tha my knowledge of it --

THE PRESIDENT(Interposing): That wasn't an answer to the question. The qu tion was whether you knew at the time that this was the view of the Naval High Command.

Answer the question.

A No, I did not know that. I knew about the opinion of the Naval High Command, that step by step it tended to act according to the measures of the ene my. That I knew.

Q But you see, that is the entire difference, Defendant. That is what you said at great lengthin giving your evidence the day before yesterday and yes terday, that you were answering step by step, the measures of the enemy. You gave that evidence. Do you say that you didn't know that this was the view of the de fendant Raeder, formed on the first day of the war? Do you say you didn't know it at all, you had no inkling that that was Raeder's view?

A No, that I did not know, because I did not know of this letter, and I don't even know whether that was the view of Admiral Raeder. I don't know that.

H0128 - 0030

Q Well, again I don't want to argue with you, but if the Commander in Chief of the Navy -- and I think at that time he called himself Chief of the Naval Staff as well -- allows the chief of his Operational Department to put this view forward to the Foreign Office -- is it the practice of the German Navy to allow post captains to put porward a view like that when it is not held by the Commander in Chief?

It is ridiculous, isn't it? No commander in chief would allow a junior officer to put forward that view to the Foreign Office unless he held it, would he

A I ask you to question the Commander of the Navy, Raeder. I could not give any information as to how this letter was written I don't know it.

Q We,, I will do that with very great pleasure, Defendant, but at the moment, you see, I have got to question you on the matters that you put forward, and my next question is:

Was it not in pursuance of the view and desire expressed in that memorandum that the U-boat command disregarded from the start the London Treaty about warning ships?

A No, on the contrary, quite on the contrary. In the West we wanted to avoid any more severe measures, and we attempted, as long as it was possible, to fight according to the London Agreement. That can be seen from all the directive that the U-boats received.

THE PRESIDENT: Sir David, ought you perhaps to draw his attention to the penultimate paragraph in that memorandum?

SIR DAVID MAXWELL-FYFE: My Lord, I probably should. My Lord, I will read the three, because if you will notice it goes on:

"The High Command does not assert that England can be beaten by unrestricted U-boat warfare. The cessation of traffic with the world trade center of England speels serious disruptions of their national economy for the neutrals, for which we can offer them no compensation.

"Points of view based on foreign politics would favor using the military method of unrestricted U-boat warfare only if England gives us a justification by her method of waging war, to order this form of warfare as a reprisal.

"It appears necessary, in view of the great importance in the field of foreign politics of the decision to be taken, that it

H0128-0031

should be arrived at not only as a result of military considerations, but taking into full account the needs of foreign politics."

I am greatly obliged, Your Lordship.

BY SIR DAVID MAXWELL FYFE:

Q Did you hear of any qualification of this view which was arrived at on considerations of foreign politics? Did you hear anything about that?

A No, I can only repeat that I saw this memorandum here for the first time.

Q I see. Well now, I would like you, just before we go on to the questions, to look at page 19 of the English document book, page 49 of the German.

SIR DAVID MAXWELL FYFE: My Lord, the whole of the treaty, which is very short, is set out there. My Lord, I have the formal copy if your Lordship would like to see it, but it is set out in these two paragraphs.

BY SIR DAVID MAXWELL FYFE:

Q You see:

"1. In action with regard to merchant ships, submarines must conform to the rules of international law to which surface vessels are subject.

"2. In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether a surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew, and ship's papers in a place of safety. For this purpose, the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured in the existing sea and weather conditions by the proximity of land or the presence of another vessel which is in position to take them on board."

I had better remind you of that because I have some questions to put to you upon it.

Would you turn over the page and look at the foot of page 20 in the English document book -- it is either page 50 or 51 in the German document book- where there are some figures set out.

H0128 - 0032

Have you got the page?

A Yes, I have read it.

Q You read it. You see that it says in the two sentences before:

"In a certain number of early cases, the German commander allowed the crew of the merchant vessel to get clear, and he even made some provision for this before he destroyed the vessel. Such destruction was in accordance with Article 72 of the Prize Ordinance, and therefore, for the purpose of this paper the Germans have been given the benefit of the doubt in such cases."

The following are the figures on record. This is for the first year of the war:

"Ships sunk: 241

"Recorded attacks: 221

"Illegal attacks: 112. At least 79 of these 112 ships were torpedoed without warning. This does not, of course, include convoy ships."

I wanted you to be quite clear, Defendant, that it excludes, first of all, ships where any measures had been taken for the safety of the crew, and secondly, it excludes convoy ships.

Now, do you dispute these figures in any way, that there were 79 attacks without warning in the first year of the war?

A Yes. These figures cannot be checked. Yesterday I stated that on the basis of the use of arms by the ships, we had to take other measures legally. So I cannot check whetherin this report, which for other reasons looks propagandistic to me, that attitude of the crews and the resistance forces is taken into consideration. That is to say, the basis or checking of these figures is impossible for me.

At any rate, the German point of view was that on the basis of the armament and on the basis of the messages and the use of these ships as members of the information system, it was legal, and that now, without warning, action would be taken against these ships.

I have mentioned already that on the whole England and the other nations acted accordingly.

H0128 - 0033

Q I am going to ask you some questions about that, but let's just take one example.

Was any warning given before the Athonia was sunk?

A No, I have already stated that that was a mistake. The sinking of an auxiliary cruiser without warning is quite legal. I have also stated already that after thorough examinationof the case, I expected more care of the commander, and that is why he was punished.

Q I just want to get your view, Defendant Did it ever occur to you that in the case of a merchant ship, if it were sunk without warning, it meant either death or terrible suffering to the crew and to these merchant seamen? Did that ever occur to you?

Just answer the question.

A If a merchantman acts like a merchant ship, then it should be treated according to the Prize Ordinance. If it does not, then the submarine has to proceed to the attack. That is legal and right according to International Law, and it was no different from what happened to German cruisers.

Q That isn't what I asked you. I wanted to know, because it is important on some of these points: Did it ever occur to you; did you ever consider that you were going to cause either death or terrible suffering to the crews of merchant ships who were sunk without warning?

Just tell us, did it occur to you or didn't it?

A Of course, but if a merchant ship is sunk legally, that is just war, and in other cases during the war suffering exists.

H0128-0034

Q Do you view with pride of achieve ment the fact that thirty-five thousand British merchant seamen lost their lives during the war? Do you view it as a proud achievement or do you view it with regret?

A Men are killed during wars. Nobody is proud of that; that is the wrong explanation. It is a necessity, a harsh necessity of warfare.

Q Well, now, just look at page 29 in the English document book, or page 58 in theGerman, whichever you care to look at. It is document C-191, GB-193. This is the 22nd of December, nineteen days after the beginning of the war. "Flag Officer U-boat intends to give permission to U-boats to sink without warning any vessel sailing without lights. Previous instructions, permitting attacks on French war and merchant ships only as a defensive measure, purely French or Anglo-French convoys only north of the Latitude of Brest, and forbidding attacks on all passenger ships, give rise to great difficulties to U-boats, especially at night. In practice, there is no opportunity for attacking at night, as the U-boat cannot identify target which is a shadow in a way that entirely obviates mistakes being made. If the political situation is such that even possible mistakes must be ruled out, U-boats must be forbidden to make any attacks at night in waters where French and English naval forces or merchant ships may be situated. On the other hand, in sea areas where only English units are to be expected, the measure desired by Flag Officer U-boats can be carried out. Permission to take this step is not to be given in writing, but need merely be based on the unspoken approval of the Naval War Staff. U-boat commanders would be informed by word of mouth..." and not e the last line "...and the sinking of a merchant ship must be justified in the war diary as due to possible confusion with a war ship or an auxiliary cruiser."

Now, just tell me -- take your choice -- do you consider that sailing without lights is either persistent refusal to stop on being duly summoned or active resistance to visit and search, within the Treaty? Which of either of these things do you consider it to be?

A If a merchant ship acts like a warship ----

Q First of all, you must answer my question, if the Tribunal permits, if the Tribunal rule otherwise, and then you can give your explanation. My question is this: Do youconsider that sailing without lights is either persistent refusal to stop or active resistance to visit and search? Do you

H0128-0035

consider it to be either one or the other or both of these things? Do you?

A The question is not put correctly, because we deal here with a certain area of operation, the ocean area where British troop transports went from England to France ---

THE PRESIDENT: Defendant, you will answer the question, please.

THE WITNESS: I did not understand.

BY SIR DAVID MAXWELL FYFE:

Q Do you consider that sailing without lights is either persistent refusal to stop on being duly summoned, which is one of the matters in the Treaty, or active resistance to visit and search, which is the other matter set out in the Treaty? Now, do you consider that sailing without lights is either or both of these matters mentioned in the Treaty?

A If a merchant ship sails without lights, then it has to run the risk to be taken for a warship, because during the night it is not possible to distinguish between a merchant ship and a warship and during that time, when our order was issued, that was an operational area where troop transports went from England to France, which were sailing without lights.

Q Your answer is that it is not covered by the Treaty but by one of the matters in the Treaty, but your explanation was that you thought you were entitled to torpedo without warning any ship that might be mistaken for a warship. That is your answer, is it?

A Yes.

H0128-0036

Q Why didn't the defendant von Ribbentrop and all these naval advisors stipulate for that when Germany adhered to this Treaty, if you were going to interpret it in that way? Were you ever asked about it before Germany adhered to this Treaty in 1936?

A I was not asked before this Treaty was signed by Germany and Germany practically adhered to that Treaty, as I know, as Flag Officer U-boats, as I know very well, until counter measures were taken and then I received the orders to act accordingly.

Q Just let us go through this document and see if you can help me perhaps a little more on some other points. Why was this action to be based on the unspoken approval of the Naval War Staff? Why hadn't the Naval War Staff the courage to speak its approval in an ordinary order if it was all right?

A Yes, this paper which you showed me now is a memorandum or a record made by a young man in the naval command. In fact, that is to say, it is the idea of that particular officer in the naval command, such as I have pointed out here, I did not know about the matters. As a matter of fact, the naval war command never issued an order of that kind to me; this is novel, this is fiction.

Q No, of course. They weren't to issue an order at all, you see. This states with great frankness that you were to act on the unspoken approval of the naval warstaff, so that the naval war staff could say, as you have said now, "We didn't issue an order," and the junior officers would be acting on an unspoken word, and I want to know -- You have been Commander in Chief of the German Navy -- why is it done in this way, why is it done by unspoken words on ural orders?

A No, that is not correct. That was an idea of that young officer. The order which I received from the Naval Warfare Command stated explicitly that in this area, primarily English transports from England to France would sail and that in this area, ships without lights could be sunk -- period.!. That is all. No further things which are stated here in the memorandum that is to say, without doubt, even the chief of that department -- but certainly the chief of the Naval Warfare Command had refused that quite unnecessary idea

H0128-0037

because that was a legal proceeding and gave me a short and clear order.

Q Are you suggesting to the Tribunal that on these vitally important points, unspoken approval of the war staff, U-boat commanders, informed by word of mouth, that a young staff officer is allowed to put in an incorrect memorandum and get away with it uncorrected? Is that the way, is that the state of efficienty of the staff of the German navy?

A No, that was misunderstood. It has been corrected. That is an entry made on the day before by the officer in the Naval Warfare Command, and his superiors in the Naval Warfare Command did not confirm it. It was corrected. It was no unspoken agreement but an open and clear order to me, so in the Naval Warfare Command already, that idea of that young officer has been rejected.

Q You know that the original is initialed by Admiral von Friedeborg?

A No, that is wrong, that is impossible. It says there "SSG". That means Fraesdorf, not Friedeborg. That wasthe Kapitaenleutnant Fraesdorf. He was the officer in theNaval Warfare Command and not Friedeborg. He was a young officer and in the first department of the Naval Warfare Command, those are things about which I found out here, who made and wrote that memorandum; andhis chief of department, Admiral Wagner, rejected it already, so it was not Friedeborg but Fraesdorf. That is the way he thought about it, this young officer, but in fact, I received orders, the clear definite order concerning that area of troop transports.

Q Take the next bit. "The sinking of a merchant ship must be justified in the war diary as due to possible confusion with a warship or auxiliary cruiser." Do you agree with taking the records after you have sunk a ship?

A No, and it was not done. That also belongs to the imagination, the ideas of that officer; never an order has been given accordingly. The order of the Naval Warfare Command in that connection exists and that is the clear and concise order, without these things, as I mentioned, in here.

Q Of course, you appreciate that these things, according to this memorandum, are to be stated without orders. There has to be no order because an order might come out -- because if it is done without an order, it won't come out. Are you suggesting, you are putting it on the shoulders of this lieutenant commander, that he invented these three damning facts, un-

H0128 - 0038

spoken approval, oral instructions to commanders, and faking the orders? You say that these existed only in the mind of a Kapitaenleutnant? Is that what you are telling the Tribunal?

H0128-0039

A Yes, yes, of course, because the clear, concise order was given by the Naval War Command to me, where these things were not included. And, quite as clearly, I gave my orders to the submarines where all these points are not included. That is what it is, this memorandum, and these thoughts of that officer were already disapproved by his chief of department in Berlin.

A clear order was given to me, and just as clearly I have sent this order to the submarines, and there was nothing in there about war diary and al these things mentioned here. That order is available. It can be seen.

Q Well, we shall be able to ask, I understand, Admiral Wagner as to where this Kapitaenleutnant got hold of these ideas, is that so, or whether he made them out? Is that what you are telling us, that Wagner willbe able to deal with this, will he?

A Admiral Wagner ought to know that exactly, because this officer was in his department in Berlin.

Q I see. Well, if you put that on to the Kapitaenleutnant, let's pass on to another point. in mid-November --

A (interposing) I am not accusing anybody of anything, but they are thoughts of a young officer which were already disapproved by his chief of department. I do not accuse anybody.

Q I see. I thought you were.

Well, now, let's pass to another point. In mid-November of 1939, Germany gave warning that she would sink, without warning, merchant ships, if armed. Don't you know that before that warning --if you want to see the point you will find it on page 21 of the English document book or 51 to 52 of the German document book. It is just before the break about five lines.

"By the middle of November, a score" -- that is 20 -- "British merchantmen had already been illegally attacked by gun fire or torpedoed from submarines."

THE PRESIDENT: Which page did you say?

SIR DAVID MAXWELL-FYFE: My Lord, page 21, about ten lines before the break.

H0128 - 0040

BY SIR DAVID MAXWELL-FYFE:

Q You see, what I am suggesting, Defendant, is that the statement, the warning, that you would sink merchant ships, if armed, made no difference to the practice you had already adopted of sinking unarmed ships without warning.

A In the beginning of October, if I remember correctly, I received the order for permission, the legal permission, to sink armed merchantmen. From that moment on I acted accordingly.

Q Just tell me: Was it your view that the mere possession of arms, a gun on the merchant ship, constituted active resistance to visit or search within the Treaty; or was this a new addition for the guidance of German U-boat warfare which you were introducing completely independent of the Treaty?

A It is a matter of course that if one has a cannon on board that one makes use of it. It would have been a unilateral obligation if that submarine, in a suicidal way, would wait until the other one fired the first shot. That is a two-sided thing that one cannot expect, that under any circumstances the submarine waits until it gets the first hit. And, as I ha stated before, practically as soon as the steamers got within reach they used their guns.

Q But, you know, the arming of merchant ships, Defendant, was well known in the last War. It was well known for 20 years before this Treaty was signed. And you will agree with me, won't you, that there is not a word i n the Treaty forbidding the arming of merchant ships? Why didn't you give these ships the opportunity of abstaining from resistance or of stopping? Why did you go in the face of the Treaty which you had signed only three years before? That is all I want to know. If you can't tell me, if you say it is a matter for argument, I will ask Admiral Raeder. At the moment, will you tell us, or can you tell us, why didn't you keep to the Treaty?

A That was not against the Treaty. I am no international lawyer. I am just a soldier; and I acted according to my military orders. Of cours it is suicide for a submarine if it waits until it receives the first hit. That is a matter of course, that the steamer is not carrying guns for the

H0128-0041

fun of it, but to make use of them. And in what way use was made of them I have already explained.

Q Well, now, just one other matter, because I must cover these points in view of your evidence.

Did you order your commanders to treat the use of wireless as active resistance? Did you consider that the use of wireless for merchant ships was active resistance within the Treaty?

A On the 24th of September --

Q (interposing) No, no, just answer the question first, Defendant, and then give your explanation. I said that to you quite 20 times yesterday and today. Did you consider the use of wireless by merchant ships as active resistance?

A According to international law, it is a general rule that a merchantman who uses the radio when it is stopped for messages can be attacked by arms. That can be found also in the French Ordinance, for instance.

In order to avoid more severe measures, we have not even generally used this interpretation. Only at the end of September when I received a definite order or permission to do so, then that absolutely legal rule according to international law was put into effect.

H0128 - 0042

Q Tell me, didn't the German Admiralty know in 1936 that most merchantmen had wireless?

A Of course, but according tothe International Conferance, international law--that I happen to know, because thatwas as a footnote in the Prize Ordinance--according to that conference of 1923, they were not permitted to make use of it when they were stopped. That is international law.

Q I see. Well, I am very glad to learn --

A (Interposing) And that can be seen in all instructions. I know for sure that the French instructions were accordingly.

Q At any rate, again the German Admiralty and the German Foreign Office did not make any mention of use of wireless in this Treaty.

What I am suggesting--I want to put it quite clearly to you--is that you were not bothering about this Treaty at all in any case where it didn't suit you in the operations in this war.

A That is not true.

Q Now, let's pass on to neutrals. I haven't heard you suggest that you were dealing with neutrals because they were armed, but let's take a concrete example.

"On the 12th of November 1939 --

A (Interposing) I have never said that neutrals were armed.

Q That is what I thought. Well, we will rule that out. We will take the example. My Lord, it is given on page 20 of the document book, and in the middle of the middle paragraph:

"On the 12th of November, the Norwegian 'Arne Kjode' was torpedoed in the North Sea without any warning at all. This was a tanker bound from one neutral port to another."

Now,Defendant, were you classing tankers bound from one neutral port to another as war ships, or for what reason was that ship torpedoed without warning? The master and four of the crew lost their lives. The others were picked up after many hours in an open boat. Why were you torpedoing neutral ships without warning? This is only the 12th of November in the North Sea, a tanker going from one neutral port to another.

H0128 - 0043

A Yes. The submarine commander in this case could not know or could not see that the ship went from one neutral port to the other.

Q Therefore --

A (Interposing) No, not for that reason, no. But that ship was on course to England, and he confused that ship with an enemy ship, with an English ship, and that is why he torpedoed it. I know of that case.

Q You approve of that action by the submarine commander?

A No, I do not approve.

Q When in doubt, torpedo --

A (Interposing) That is one of the cases --

Q (Interposing) Don't you approve of that, when in doubt, torpedo without warning: Is that your view?

A No, no; that is merely your assertion. And if in my clean U-boat warfare of five and a half years you can find one or two instances of confusion, this does not prove anything and certainly contradicts your assertion.

Q Yes. Well, now, let's look at your clean U-boat warfare if you want t Will you turn to page 30 of the English book?

A Yes.

Q Or page 59 to 60 of the German book.

Now, the first of these--this is the note on the intensification of U-boat warfare. You say that on directive of the Armed Forces High Command of 30 December--this is on the 1st of January 1940--the Fuehrer on report of Defendant Raeder has decided:

"(a) Greek merchant vessels are to be treated as enemy vessels in the zone around Britain declared barred by the U.S.A."

SIR DAVID MAXWELL FYFE: There is a mistake, My Lord, in the translation. You see it says "blockaded by the U.S.A. and Britain." The proper translation should be "in the zone around Britain declared barred by the U.S.A."

BY SIR DAVID MAXWELLFYFE:

Q Now, Defenda,t I don't want to make any bad point, at any rate intentionally. Were you including Greek ships because you believed that most of the Greek merchant navy was on British charter, was being chartered by Britain? Was that the reason?

H0128-0044

A. Yes. Those may have been the reasons of the Naval Warfare Command for that order, because the Greek Fleet was sailing for England. But I assumed that those were the reasons of the Naval Warfare Command.

Q. Assume that was the reason. I do not want to occupy time on the point. What I want to know is this: Did that mean that any Greek ship in these waters would be sunk without warning?

A. Yes. It can be seen here that they are to be treated like enemy ships.

Q. In sum, then that means that a Greek merchantman from that on would be sunk without warning if it came into the zone around the British coast.

Now, you mentioned the Bristol Channel, and you have given your explanation of the next sentence. You say all ships may be attacked without warning. For external consumption, these attacks should be given out as hits by mines.

I just want to get it clear from you. You are not suggesting that the reason of the Naval High Command was to conceal the maze of operations of the U-boats; the reason was to avoid trouble with neutrals whose good will you wanted to keep, was it not?

A. I explained that I already stated my position on that yesterday. These are matters of the political leadership which are known to me. I have looked only for the military advantage as commander of the U-boats, or military necessity, such as has been done by England in similar cases. What the political reasons may have been, I could not say.

Q. That is my whole suggestion to you, you know, Defendant, that you were acting on the military necessity stated in that memorandum of the naval command that the maximum damage to England could be achieved only with unstricted use of arms without warning. But let us just look at the next one now.

A. Those were certain areas of which the neutrals had been warned. I already stated yesterday that in English operational areas the same methods were used. If a neutral entered these areas where military actions were constantly going on and if he entered in spite of the warning that he had, then

H0128 -0045

he had to run the risk of damage for doing so. Those were the reasons which may have led the Naval Warfare Command to take these steps.

Q. As you mentioned that, I shall deal first with your areas. Your zone, which was published, was from the Faroes to Bordeaux and 500 miles west of Ireland. That is, your zone was 750,000 square miles; isn't that right? Your zone around Britain was from the Faroes to Bordeaux, and 500 miles west of Ireland?

A. Yes, that is the operational area of August, 1940.

Q. Yes, of August, 1940.

A. And it is quite in accord with the so-called combat zone, the entry into which America prohibited to her merchant ships.

Q. You say it is in accord. Let us just look at it and see what the two things were. The United States at that time said that its merchant ships were not to come into that zone. You said that if any merchant ship came into that zone, 750,000 square miles in extent, none of the laws and usages of war applied, and that ship could be destroyed by any means you chose.

That was your view, was it not?

A. Yes, that is the German point of view in international law, which has also been used by other nations, that operational areas around the enemy are admissable. On the whole, I can say again that I am not a specialist in international law. I am a soldier, and I judge according to common sense. I consider it a matter of course that an ocean area, or an ocean zone, around England could not be left to the enemy without interference.

Q. I do not think you are disputing it at all; but I want to get it quite clear. It was your view that it was right that if you fixed an operational zone of that extent, any neutral ship -- and you agree that it is a neutral ship -- coming

H0128 - 0046

unarmed into that zone could be destroyed by any means that you cared to use? That was your view of the way to conduct a war at sea; that is right, is it not?

A Yes; and there was a sufficient number of British statements according to which it is quite correct that during war time -- and we were at war with England -- it could not be permitted that neutrals should be in a position to support the belligerents, especially if they had been warned previously not to enter these zones. According to international law, that is quite legal.

Q We will discuss the matter of law with the Tribunal. I want to get at the facts.

That is the position which you adopt? And equally, if you found a neutral vessel outside the zone using its wireless, you would treat it as if it were a ship of war of a belligerent power, would you not? If a neutral vessel used its wireless after seeing the submarine, you would treat it as a ship of war of a belligerent power, would you not?

A Yes, according to regulations of international law.

Q I see. As I say, the matters of law rest with the Tribunal. I am not going to argue these with you. But, apart altogether from international law, did it ever strike you that that method of treating neutral ships was completely disregarding the life and safety of the people on the ships? Did that ever strike you?

A I have already said that the neutrals had been warned about the danger of these zones. If they entered into these zones, they had to run the risk of damage. Otherwise, they should stay away. That is what war is. For instance, on land, one would also take no consideration if all of a sudden a neutral chain of trucks would bring ammunition or supplies to the enemy. Then we would consider it in the same light. It is, therefore, quite admissible to draw an operational area around the enemy's country in the ocean. Those are the instructions I got from international law, although I am only a soldier.

Q I see.

A A strict neutrality would require that one keep out of a combat

H0128 - 0047

area. Whoever gets into a combat area has to take the consequences.

Q I see. That is your view? I do not think it could possibly be put more fairly.

A And for that reason, the United States explicitly prohibited in November entry into these zones, because they said, "We do not want to enter these zones."

Q In your view, any neutral ship which entered a zone of 750,000 square miles around Britain was committing an unneutral act and was liable to be sunk without warning at sight. That is your view of how war at sea should be conducted; that is right, is it not?

A Yes. For the neutrals special lanes were given. They did not have to enter the combat area unless they went to England. Then they had to run the risk of war.

Q I just want you to tell me, if you will look back to Document C 21; that is, on page 30 of the English book and pages 59 to 60 of the German, you see that in all these cases -- you take the one in Paragraph 2, Page 5, Conference with the Head of Naval War Staff on the 2nd of January; that was the intensified measures in connection with the Fall Gelb -- that is, the invasion of Holland and Belgium -- it mentions the sinking by U-boats without any warning of all ships in those waters near the enemy coasts in which mines can be employed.

Why, if, as you have just told the Tribunal several times, you were acting in accordance with what you believe to be international law, did you so act only in areas where mines could be employed?

A That, also, I have already explained. It is not a question of legality but of military necessity. In an area where mines can be laid, for military reasons, I cannot explain to the enemy clearly what means of combat I am using.

You operated in the same way. I remind you of the French area, the French warnings that mines had been laid around Italy. And you did not state, either, with what means or weapons you were going to operate. That has nothing to do with legality. That is purely a question of military necessity.

H0128 - 0048

Q You see, I think you will appreciate that the point that I am putting to you is this: that you were pretending to neutrals that you were acting in accordance with the London Treaty, whereas you were actually acting not in accordance with the treaty, but in accordance with instructions you laid down for yourself, based on military necessity.

What I am suggesting to you that the Naval High Command was doing was pretending to, and getting the advantage fraudulently of appearing to, comply with the treaty. And that, I suggest is the purpose of these orders that you would only do this where mines could be laid. Isn't that what was in your mind?

H0128 - 0049

A That is not correct, that we tried to fool the neutrals. We warned the neutrals clearly that in these areas there would be combat actions, and that if they entered they would be endangered. We did not pretend anything, but we told them definitely, "Do not enter these zones." England did the same thing.

THE PRESIDENT: Sir David, doesn't the next sentence bear upon that?

SIR DAVID MAXWELL-FYFE: Yes, Your Lordship; I am very much obliged to your Lordship.

BY SIR DAVID MAXWELL-FYFE:

Q Would you look at the next sentence in II-1 , where it says the following?

"The Navy will authorize, simultaneously with the general intensification of the war, the sinking by U-boats without any warning of all ships in those waters near the enemy coasts in which mines can be employed. In this case, for external consumption, pretense should be made that mines are being used. The behavior of and use of weapons by U-boats should be adapted for this purpose."

Do you say, in the face of that sentence, that you were not trying to fool the neutrals--to use your own phrase? Do you still say you were not trying to fool the neutrals?

A No, we did not fool them because we warned them before. During a war I do not have to say what weapon I want to use; I may very well camouflage my weapon. But the neutrals were not fooled. On the contrary, they were told "Do not enter these zones." Whether I used this or that military method in these areas has nothing to do with the neutrals.

Q Now I want you to tellthe Tribunal, what was your view of your responsibility tothe seamen from boats that were sunk? Would you have in mind the provisions of the London Treaty, and willyou agree that your responsibility was to save seamen from boats that were sunk wherever you could do so without imperiling your ship? Is that, broadly, correct?

A Of course, if the ship behaved according to the London Agreement itself; that is to say, if it did not occur in these zones.

Q Oh? Do you really mean that? That is, if you sank a neutral ship which

H0128 - 0050

had come into that zone, you considered that you were absolved from any of your duties under the London Agreement to look after the safety of the crews?

A In areas of operation, orin zones of operation, I am obliged, after the combat, to take care of the shipwrecked if the military situation permits, just the same as others have done in their operational areas.

Q That is what I put to you, defendant. Please believe me, I don't want to make any false point. I put to you: If they could do so without imperiling their ships, that is, without risking losing their ships. Let us get it quite clear. Do you say that in the zone which you fixed there was no duty to provide for the safety of the crew, that you accepted no duty to provide for the safety of the crew?

A I have stated that I was obliged to take care of the shipwrecked after combat if the military situation permitted it. That can be read in the Geneva Convention or in the agreement as to its application.

Q Then it didn't matter whethwr the sinking was in the zone or out of the zone. According to what you say, you undertook exactly the same duty towards survivors whether it was in the zone or outside the zone. Is that right?

A No, that is not correct, because outside of the zone neutrals were treated according to the Prize Ordinance, only inside the zone they were not.

Q What I can't understand is this--and really, I hope I am not being very stupid. What was the difference? What difference did you consider existed in your responsibility towards survivors if the sinking was inside the zone or outside the zone? That is what I want to get clear.

A The difference was that neutrals outside of the zone were treated according to the Prize Ordinance. According to the London Agreement, we were obliged, before the ship was sunk, to take all measures for the safety of the crew. That obligation was not given inside the zone. In that case the Hague Agreement for the application of the Geneva Conventionwas the basis,

H0128 - 0051

where care should be taken of the shipwrecked if the military situation permits.

Q Will you agree that an order in express terms to annibilate, to kill, the survivors of a ship that is sunk would be an appalling order to give?

A I have already stated that the fighting of survivors was contrary to a soldier's morals and that I have never contributed to that by any order, not even in the way of reprisals; and suggestions of that kind have been made to me.

Q Will you agree that even withthe discipline in your own service and your own branch of the service, there was a possibility that some U-boat commanders would have refused to comply with an order to annihilate survivors?

A Well, in the first place, such an order was never given at all.

Q I think it is quite a fair question. What if it were given in express terms, "Annihilate survivors after

H0128 - 0052

you sink a ship"? You know your officers. Would there, at any rate, have been some danger that some of them would have refused to carry out that order?

A Yes. As I know my U-boat forces, there would have been a storm of indignation against such an order because, in the face of the clean idealism of these people, they would never have done it. I would never have given such an order, nor would I have permitted such an order to be given.

Q Yes, that is what I put to you.

Now, just look at page 33 of the English document book. That contains your own Standing Order No. 154. Let me read it to you, rather slowly, if the Tribunal does not mind. It says:

"Do not pick up survivors and take them with you; do not worry about the merchant ship's boats: weather conditions and distance from land play no part. Have a care only for your own ship and strive only to attain your next success as soon as possible. We must be harsh in this war."

First of all, tell me, what do you mean by "your next success2? Doesn't that mean the next attack on a vessel?

A Yes.

Q Now, just look at that order of yours and compare it with the words of the London Treaty. The Treaty, you remember, says that a warship, including a submarine, may not sink or render incapable of navigation a merchar vessel without first having placed passengers, crew and ship's papers in a place of safety. "For this purpose, the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel."

Defendant, you had that article of the London Treaty in front of you, had you not, when you were drafting this order? And you were deliberately excluding from your order the matters mentioned in the London Treaty? Listen to your order:

"Do not worry about the boats; weather conditions", one thing mentione in the Treaty, "and distance from land", another thing mentioned in the Treaty, "play no part.

Your order could have been put in other language almost as clearly: "Disregard all the matters that are stated in Paragraph 2 of the London

H0128 - 0053

Treaty."

Now tell me, didn't you have the London Treaty in front of you when you drew that order?

A Of course I had the London Treaty in my mind and in front of me, but I stated in detail yesterday that we dealt here with the struggle against a protected ship, an escorted ship, as can be seen from the entire order, of which you have taken just one excerpt. Therefore, the Hague Agreement, which has nothing to do with escorted ships, could not apply.

Secondly, this applied to a zone where, right close to the British Coast, the greatest danger existed of being attacked by enemy escorts. The Agreement has nothing to do with a fight against an escorted merchant ship.

Those are two entirely different things; and that order applied to this area, or this zone, for that kind of combat against an escorted ship. I explained that clearly yesterday.

Q But if you say that that only applied when it was a question of attacking ships in convoy, would you look at page 26 of the English document book and at page 57 of the German document book? There you will find the account of the sinking of the Sheaf Mead on the 27th of May, 1940. And if you will look at the U-boat's log, opposite the time group 1648 hours -- which is on page 27 of the English and page 57 of the German -- this is what the log says:

"A large heap of wreckage floats up. We approach it to identify the name. The crew have saved themselves on wreckage and capsized boats. We fish out a buoy; no name on it. I ask a man on the raft. He says, hardly turning his head 'Nix, Nein.' A young boy in the water calls, 'Help, help, please.' The others are very composed", and so on. "They look tired and, naturally, they have a look of cold hatred on their faces. Then on to the old course."

If you turn to page 57 of the German document book, or page 28 of the English, you will find the last sentence from the survivor's report describes the submarine as doing this:

"They cruised around for half an hour, taking photographs of us in the water. Otherwise they just watched us but said nothing. Then they submerged

H0128 - 0054

and went off without offering us any assistance whatever."

There you see the point, defendant, that your own commander says that there was a young boy in the water calling "Help, help, please", and your submarine takes a few photographs, submerges, and then goes off.

THE PRESIDENT: Sir David, ought you to refer to the passage just after the name of the vessel, under 1648, "It is not clear"?

SIR DAVID MAXWELL-FYFE: "It is not clear whether she was sailing as a normal merchant ship. The following seemed to point to the contrary." And then, my Lord, it gives a number of matters.

Of course, my Lord, I am on the point of survivors at the moment. I am not taking this instance as a matter of wrongful sinking; I am taking it as an instance of carrying out this order.

I am very much obliged to your Lordship, but that is why I didn't do it.

THE PRESIDENT: The Tribunal will adjourn now.

(A recess was taken until 1400 hours).

H0128 - 0055

Official transcript of the International Military Tribunal in the Matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering et al, defendants, sitting at Nurnberg, Germany, on 10 May 1946, 1400-1700, Lord Justice Lawrence presiding.

DEFENDANT DOENITZ -- Resumed

CROSS-EXAMINATION -- Continued

BY SIR DAVID MAXWELL-FYFE:

Q Defendant has now had opportunity of looking at the log of U-37. Wasn't it your practice in May, 1940, to see personally the logs of all U-boats when they arrived?

A I am sorry but the German translation is so indistinct that I cannot hear.

Q Was it your practice to see personally all the logs of U-boats when they returned from their trips?

A (No response)

Q Was it your practice to see personally the logs of all U-boats when they returned from their trips?

A The commanders of submarines always had to report verbally to me. The logs, which arrived several weeks after the entries were made since they were written in the port, were then submitted to me by my Chief of Staff; and early, if they contained statements which were additional to the verbal report.

Q Did you remember seeing the log of U-37 that was involved in this incident?

A No.

Q Do you now observe that the "Sheaf Head" was not sailing in convoy?

A Yes. I notice. And I also know that it was an armed ship and that the orders which the commandant had said that he was entitled to sink it as an armed ship. It also appears from the log that he could not decide on firing torpedo until he had ascertained that the ship was armed. That is very clearly expressed in this document.

H0128 - 0056

Q May I please explain to his Lordship that I am not on the question of sinking. I am on the question of survivors. Did you take any action with the U-boat commander Kapitaenleutnant Ernst for not having assisted in the rescue of survivors?

A No. But I did tell him that if he was on the spot where this rescue went on he should have helped.

Q Was he not simply carrying out your Order 154 of November or December, 1939?

A No, he didn't.

Q Well, now --

A I have already stated for which part of the sea it applied and that it only applied for ships which were secured. Armed, presumably.

Q Well, now, would you look at page 34 in the English Document Book, page 69 in the German Document Book. It is the report of the conversation between Hitler and Oschima and you say that you were told nothing about it. Now I want you just to follow about half way down, half way through the extract, where it says:

"After having given further explanations on the map the Fuehrer pointed out that however many ships the United States built, one of their main problems would be the lack of personnel. For that reason even merchant ships would be sunk without warning, with the intention of killing as many of the crew as possible. Once it gets around that most of the seamen are lost in the sinkings the Americans would soon have difficulties in enlisting new people. The training of sea-going personnel takes a long time."

Now, did you agree with that argument of Hitler's that once it gets around that most of the seamen are lost in the sinkings, the Americans would soon have difficulties in enlisting new people? Did you think that that was a sound argument in the question of sea warfare against the United States?

A I have already given my answer to that question in writing to the Foreign Office, and I stated my opinion, which is that I do not believe that it would take a long time to train seamen since American wasn't lacking

H0128 - 0057

replacements. Consequently I would not be of the opinion that this would have a scaring-off value if these people were not rescued.

Q So you don't agree with the Fuehrer's reasoning on that point?

H0128 - 0058

A No, I don't agree to the last part, namely, that there is a lack of new seamen.

Q No, it is the first point that I want your opinion on expressly, once it gets around that most of the seamen are lost in the sinkings, the Americans would soon have difficulties in enlisting new people. That is, I suggest to you that the new people would be scared off by the news of the sinking and killing of the first people. Did you agree that that was a sound argument. That is what I want your view on.

A Whether the scaring off would happen or not is an American matter which I cannot judge.

Q Would you look at your own document book, Volume 1, Page 29, in the English version, which is your report to the Fuehrer on the 14th of May 1942. Do you see the last sentence where you are advocating a rangepistol? You say:

"A rangepistol will also have the great advantage that the crew will not be able to rescue themselves on account of the quick sinking of the torpedoed ship. This greater loss of crews will no doubt cause difficulties for the assignment of crews for the great American construction program."

A It is perfectly clear and it is correct if they haven't got the same crews and have to have new ones it will make it difficult; but this doesn't mention a scaring off. The positive fact is stated that new crews will have to be trained.

Q So, are we to take it that you did not think that would have any frightening or terrorizing effect on the getting of new crews if the old crews were sunk under conditions where they would probably lose their lives?

A That is an opinion, It depends on the courage, the bravery of the people. The American Minister Knox said that whereas in 1941, the sinking of German U-boats was not known, he nevertheless was expecting the scaring-off value, as far as my submarines were concerned. That is his opinion. I can only say that the silent disappearing did not have a scaring-off value. It is a matter of taste

Q Well, on the 14th of May the Fuehrer was pressing you to take action against the crews after the vessel was sunk. Isn't that so?

A Yes. He asked whether we couldn't proceed against the crew. I have already said that when I heard of the Oschima discussion here, I believed that

H0128 - 0059

-this question to Grand Admiral Raeder and myself was the result of that Oschima discussion. My answer to that of course is no.

Q Your answer was no, it would be far better to have a rangepistol and kill them while they were still on the boat. That was your answer, wasn't it?

A No. My answer was that proceeding against shipwrecked personnel was out of the question, but as a matter of course one must use the best possible weapon. Every nation does that.

Q Yes, but the object of your weapon as quite clearly set out was that the crew would not be able to rescue themselves on account of the quick sinking of the ship. That is why you wanted to use the rangepistol.

A Yes. And also for that reason because the crews of the steamer, since they were fighting with arms, were considered commandos.

Q Well, I am not going back to deal with that point again, but that was in your mind. Now, the Fuehrer raised this point again on the 5th of September 1942, as is shown in your document book. Volume 2, Page 81.

H0128-0060

A. I do not have it. Where is it?

Q. It begins with the discussion in the OKW situation of 5 September 1942. It is Exhibit 39, page 81, and it is in the English document book, volume two.

A. Yes, I have found it now.

Q. It arises out of an incident of the sinking of the mineboat "Ulm", and there is a question of whether British destroyers had fired with machine arms on soldiers in lifeboats, and the Fuehrer gave orders to the naval command to issue an order according to which "our warships would use reprisals," and if you look a little lower down, you say that, "That the matter had been investigated by your operations staff, and it is stated,

"It could not be proved beyond a doubt that the fire had been aimed at the crew boarding the lifeboats. The enemy fire was evidently aimed at the ship itself."

Then you discuss the question of applying reprisals at the foot of that page, and you say,

"It is the opinion of the Naval War Command that before issuing reprisal orders, one should take into consideration whether such measures, if applied by the enemy against us, would not in the end be more harmful to us than to the enemy. Even now our ships have only in a few cases the possibility to save shipwrecked enemy crews by towing the lifeboats, etc., whereas the crews of sinking German U-boats and merchant vessels so far, as a rule, have been picked up by the enemy. To turn matters in our favor, we would have to order, not only to abandon, but also to fight against shipwrecked enemy crews as a measure of reprisal.

"It is significant in this respect that so far it could not be proved that in the cases on record where the enemy used arms against shipwrecked Germans such action was ordered or covered by an order of an official British office. We would hve to count on it that knowledge of such a German order would be used by enemy propaganda in such a manner that its consequences could not easily be foreseen."

H0128-0061

DR. KRANZBUEHLER: Mr. President, I have objections agains this type of procedure. The document about which this cross examination is being made is not a document submitted to me as evidence. I have not submitted it yet. I do not know whether it is customary during these proceedings that exhibits of the Defense are submitted and can be submitted by the Prosecution. I had suggested for this very reason some time ago that the documentary evidence should begin so that the Prosecution should have an opportunity to use my evidence, my exhibits in cross examination.

THE PRESIDENT: Have you any objection to the document which is in your document book being offered in evidence?

DR. KRANZBUEHLER: I shall offer the document, Mr. President, but I only want to avoid that now during cross examination my documents should be read by the Prosecution because my entire documentary evidence is being upset through that. This particular case does not play a decisive part for me, but it the Prosecution are proposing to make other documents of mine the subject of their cross examination, documents which have not yet been submitted by me, I should like to ask that the cross examination be interrupted and I now be afforded an opportunity to submit my documents.

THE PRESIDENT: That will only waste time, will it not? It would not do any good; it would only waste time.

DR. KRANZBUEHLER: Mr. President, I do not think it would be a waste of time if I, as Defense Counsel, ask that I be allowed to submit my own documents to the Tribunal myself and that they shall not be quoted from my document book to the Tribunal by the Prosecution, because the type of presentation and the questions attached to that do, of course, give these documents a certain character.

THE PRESIDENT: Dr. Kranzbuehler, The Tribunal thinks there is no objection to the course that is being taken. You have had the opportunity already of putting this document to the witness. You will have a further

H0128 - 0062

opportunity of putting it to him again in re-examination.

BY SIR DAVID MAXWELL-FYFE:

Q. So that there was fresh pressure on you to take this course, that is, to fire on the crews of sunken vessels in September, was there not?

A. No, that is not correct. This document of the Naval Command Staff only became known to me here. I was not in the picture

H0128 - 0063

therefore, but it is true that in accordance with this document, the Naval Command Staff had apparently had orders from the OKW to compile a list of all such cases and that the Naval Command Staff was purely occupying itself with the belief that one would have to be very careful in judging these cases and that it advised against reprisal measures. It appears to me that this document had the very purpose to convince that principally such reprisals should be refrained from.

Q Did you know that on the instructions of Hitler, the OKW had put through an inquiry to the Naval Command Staff on this point in September?

A No, I did not know that. I just said I do know this entry from the log of the Command Staff, together with the appendix which is attached to it and which I first heard of here.

Q You first heard of it here?

A This was in Berlin, and I was in France.

Q Well, if you tell the Tribunal that you did not know about it in September, then we will pass on to another document. That is what you say, that you did not know about it in September 1942?

A That is right.

Q Now, I would just like you -- I do not want to take you through the "Laconia" in any detail, but I want you just to tell me about one, I think, one or two entries. I think it is page 40 of your own document book.

THE PRESIDENT: Is that not on page 41?

SIR DAVID MAXWELL-FYFE: I am very much obliged to Your Lordship.

BY SIR DAVID MAXWELL-FYFE:

Q It is page 41, at the bottom. It is for 20 September, 1320 hours. That is your wireless message to the U-boat Schacht. Do you see that?

A Yes, and I verified that in detail yesterday.

Q I just want to know is it true what is stated in your wireless message that the boat was despatched to rescue Italian allies, not for the rescue and care of Englishmen and Poles? Is that true?

A That is correct, because the vessel had reported to me that it had

H0128 - 0064

boats in tow, and it is on page 40. It was clear, considering the entire situation, that a submarine, with vessels in tow, could not remain on the surface without losing a great deal of value. That is the reason for what is mentioned under the second order on page 40, which says that the boats with British should be cast adrift. That was the one reason, and then on page 41 there comes a long wireless message which is, in fact, a summary. It was understood however that he considered his boat in danger through having to stop, and so on and so forth, and that there had been two air attacks, and then he received that wireless message. Since I had not spoken against the saving of Englishmen, I received the impression that in the occurrence the Italians, who after all were our allies, were getting the short end of the stick. That is proved by the figures.

Q You have given a long explanation. Now, is that wireless message true, that the boat was despatched to rescue Italian allies, not for the rescue and care of Englishmen and Poles? Is that true or not true?

A Of course, that wireless message refers to those two events, and it is even more clarified by the event as such, as well as the impression that the total number of British personnel was counted among them, whereas a large number of Italians drowned, but that impression did not arrive until the end.

THE PRESIDENT: You understand the light, do you not?

BY SIR DAVID MAXWELL-FYFE:

Q Now, there is one point I want you to make a little clearer. When you were interrogated about this matter, you said that you were under great pressure at the time, and I think the pressure came to you from Hitler through Captain Fricke. Is that right?

A No, not "only"; "also" but not "only". The pressure, as I have very clearly explained here, was due to worry and anxiety regarding the fate of my submarines. I knew that they were now being greatly jeopardized, and we have had evidence of that because of the bombing. Secondly, of course, Frick passed on the Fuehrer's orders, but I have also stated here that in spite of that order, I remained in favor of rescuing, in spite of the fact that that was a military mistake. My worry and anxiety were, of course, mostly for the submarines, for my submarines.

Q So that at this time you had had the report to the Fuehrer on tge 14th of May; you had then had the Laconia incident, and during that incident you had had the pressure from the Fuehrer. Now, wasn't it because of this --

A I beg your pardon, but --

Q Allow me to ask my question.

A I think there is an error that has crept into it there.

Q Very well, I will correct it. You had had the report to the Fuehrer on the 14th of May. You have told me that. There was then the Laconia --

A But that has nothing to do with the Fuehrer's order referring to the case of the Laconia. In the case of the Laconia the Fuehrer merely stated correctly that no boats should be endangered during rescue activities. That was a suggestion quite different from the subjects of the 14th of May.

Q I am trying to assmble for the moment what matters you had to deal with. You had had the 14th of May, the Laconia incident, and then an order to stop, from coming through, from the Fuehrer.

A No, in the case of the incident of the Laconia I didn't think of the discussion of the 14th with the Fuehrer, and couldn't, because that was an entirely different subject. This was entirely a matter of the rescue here. There was no connection between the two.

Q We will see about that. Turn to page 36 in the British Document Book, or pages 71 to 75 in the German Document Book --

A Is that --

Q 71 --

A You mean the Prosecution's book?

Q Yes, the Prosecution's book; 36 in the English or 71 to 75 in the German.

A And in the English?

Q 36.

A Thank you very much.

Q Now, you have told us that what mainly concerned you was the

H0128-0065

Q So that at this time you had had the report to the Fuehrer on tge 14th of May; you had then had the Laconia incident, and during that incident you had had the pressure from the Fuehrer. Now, wasn't it because of this --

A I beg your pardon, but --

Q Allow me to ask my question.

A I think there is an error that has crept into it there.

Q Very well, I will correct it. You had had the report to the Fuehrer on the 14th of May. You have told me that. There was then the Laconia --

A But that has nothing to do with the Fuehrer's order referring to the case of the Laconia. In the case of the Laconia the Fuehrer merely stated correctly that no boats should be endangered during rescue activities. That was a suggestion quite different from the subjects of the 14th of May.

Q I am trying to assmble for the moment what matters you had to deal with. You had had the 14th of May, the Laconia incident, and then an order to stop, from coming through, from the Fuehrer.

A No, in the case of the incident of the Laconia I didn't think of the discussion of the 14th with the Fuehrer, and couldn't, because that was an entirely different subject. This was entirely a matter of the rescue here. There was no connection between the two.

Q We will see about that. Turn to page 36 in the British Document Book, or pages 71 to 75 in the German Document Book --

A Is that --

Q 71 --

A You mean the Prosecution's book?

Q Yes, the Prosecution's book; 36 in the English or 71 to 75 in the German.

A And in the English?

Q 36.

A Thank you very much.

Q Now, you have told us that what mainly concerned you was the

H0128 - 0066

H0128-0067

safety of your own boats and your own personnel.

A Yes.

Q Why did you put into the order "The rudimentary demands of warfare for the destruction of ships and crews"? What was the point of putting these words in, unless you meant to encourage people to destroy enemy ships and crews?

A I had explained that quite carefully yesterday. I had preached during all these years that you must not rescue when your own safety is in danger. In the case of the Laconia I told that to the troops, in four wireless messages, due to my anxiety and worry. Apart from that, I experienced it again and again that submarine commanders were taking the danger from the ai too lightly, and I have explained how that is to be explained psychologically. I described yesterday how the Air Forces increased and that consequently under no circumstances would I have given the reason and told these people again that if there is danger from the air you must do that and that, you must not rescue, or rescuing is contrary to the most primitive manner of warfare. The reason is because there was no question -- I was taking away from the commandants any arguments on questions of air attack. After all, my experience with losses and the steady presence of the Air Force, which is historical, and increasing more and more, and on the basis of my experience I had to give directly acute orders to the commandants saying, "You can't go on like that or we shall be attacked and killed by the opponents whilst we rescue their own men." That was why that could not come into it. I did not wish to give the commanders another opportunity of thinking out or discussing this vital point. I told you yesterday that I could have added that if we do not consider the danger from the air and we rescue the opponent and are being attacked by that very opponent, then that rescue is against the most primitive principles of warfare. I didn't want to do that, because I didn't want any discussions or arguments. We all had the impression that I said "don't rescue because there is air danger", that this idea was worn-out Because the commanders would nevertheless lose their own liberty of decision.

Q But if you had simply said "You are forbidden to rescue", and if

H0128 - 0068

you had wanted to give a reason "You are forbidden to rescue because in view of the Allied air cover it is a matter of too great danger for the safety of yourself and your boat ever to rescue at all, " that would have been quite clear. Why didn't you put it that way?

A No, not at all. That is what I have just said. Because, again, a commander in some theatre, some part of the sea, might have an idea there wasn't danger from the air and the next moment there was an aircraft and he was smashed.

Q Now, you had two experienced staff officers with you at the time that you got this order out -- Captains Gote and Hessler, had you not?

A Yes, that's right.

Q And both Captain Goete and Captain Hessler advised you strongly against the issue of this order, did they not?

A As far as I can remember, they roughly said this: "The bulk of the submarines" -- and this is what I have said here -- "the bulk of the U-boats, that is, more than 90 per cent of them were already fighting the convoys, so that those orders wouldn't affect them at all. And the question was: Did we want to issue such a general order at all, and whether there were further developments which were forcing us currently to issue yet new orders, namely, 'Stay on the surface as little as possible' wouldn't make an order superfluous but since I was responsible for every possible loss of a submarine I had to give this additional order and my staff agreed with me perfectly as far as this measure was concerned.

Q Didn't you say when you were interrogated on the 22nd of October and on other occasions "Gote and Hessler told me, 'Don't make this wireless; you see, one day there can be a wrong appearance about; there can be a misinterpretation of that.'" Didn't you say that?

H0128 - 0069

A Yes, I did, and it is true too, quite possibly, such a remark was made. But it wasn't misinterpreted, or I wouldn't have issued the order. We were thinking of the effects on the outside world.

Q And wasn't the effect that you wanted to produce that you would have an order which could be argued was merely a prohibition of rescue and would encourage the submarine commanders who felt that way as to annihilating the survivors of the crews?

A No, that was absolutely wrong, and it is proved by the documents which we submitted. Apart from the case Moehle, nobody misunderstood this order at all and when we compiled the order we weren't aware of that fact. That becomes clear from the correspondence which we had from commandos and it becomes clear from my inquiries when I asked whether they had in any way considered such a possibility.

Q Well, now --

A What's more, this order doesn't show that and the cause as such doesn't indicate it. We were rescuing for all we were worth, but this is the subject, "rescue or don't," and nothing else. This is the final stage of the Laconia case.

Q You said that "we issued the order." Do you remember saying this on an interrogation on the 6th of October?

"I am completely and personally responsible for it, because Captains Gote and Hessler both expressly stated that they considered the telegram as ambiguous or likely to be misinterpreted."

Do you remember saying that, "I am completely and personally responsible" because both your staff officers had pointed out that it was ambiguous? Did you say that?

A I don't suppose I said it like that. I am not sure, but I say now that during the interrogation I was told that Captains Gote and Hessler made this order and in reply to that I said, "It is quite immaterial, I am responsible for the order." And apart from that, the discussion on that order we discussed whether one ought to issue such an order; in Admiral Gote's or Captain Hessler's brain the thought might crop up that such an order could be

H0128 - 0070

misunderstood by us -- that is, the U-Boats. That I emphatically stated during the interrogation. I have expressly stated that these considerations and the discussion of that question whether the order was to bepublished or not was having nothing to do in the case of these two people, that the order could be understood among us, and that too was contained in an interrogation.

Q You were making clear that it was the first occasion. I made it clear that you weren't blaming your junior officer that had advised you against this and this, and you were taking the responsibility on this occasion yourself. That is true, these junior officers advised you against it? In your own words, they both expressly stated that they considered the telegram ambiguous and liable to be misinterpreted, that's right, isn't it, they did say that?

A I didn't see the discussion after the record was made, and I didn't sign it; but I can tell youquite clearly -- and this becomes clear from another discussion -- that I have said that I myself will assume full responsibility. That was important to me. The only reasonwhy the whole question came up was because the interrogating officer told me these officers had written the order and then it was going around: inmyhead that under no circumstances should these officers be held responsible if theywrote my order. That was the sense of my statement.

Q Well, at any rate, you are not changing what you said a few minutes ago, that both Captain Gote and Captain Hessler advised you against issuing this order, are you?

A According to my recollection, both first of all advised against it. Now I have heard that both are saying they hadn't advised against it but that I might have or somebody else -- I don't know for certain, but the way I

H0128 - 0071

recollect it, it was that both had advised against it. If 90 per cent of our submarines should work in convoy work, whether it was advisable to issue such an order, they were being forced into the water anyway and we still couldn't possibly rescue since we were below the surface, I said, "No there are still cases when such a thing can happen and where the commander is then put into that emergency and then I shall relieve him of the decision." That was the discussion and what we were up against and nothing else.

Q We will continue. That is the first part of the order. Take paragraph 2, "the orders for bringing in Captains and Chief Engineers still apply." Now, Defendant, you know perfectly well that in order to find the captain or chief engineer the U-Boat has got to go around the lifeboats or wreckage and make inquiries, "where is the captain?" And you know very well that the usual practice of the British merchantmen was to try and hide the captain and prevent them finding out who he was. Isn't that the practical position that had to be met, that you had to go around the lifeboats asking for the captain if you wanted to bring him in? Isn't that so?

A · Not to that extent, no. I had stated quite clearly yesterday that the risk of taking aboard one man was much shorter as far as time was concerned, and would not in any way limit the diving ability of the boat, whereas the rescuing of others would interfere.

Secondly, that was a military aim ordered by the Navy Command Staff for which a certain risk would have to be assumed during such a war; and, thirdly, that the significance of that paragraph appeared to be lean and always remained so. This order if you want to understand it like this and take it out of its context, spoke against the statement, namely, I want these people killed, because here I want somebody taken prisoner, but if I kill somebody first then I can't take him prisoner.

Q I am putting it to you that the second part of the order is that you are to bring in captains and chief engineers to find out what you can from them.

Look at the third paragraph: "Rescue ship crews only if their statements will be of importance for U-boats that is, of importance for you to learn from them the position of Allied ships, or the measures the Allies are taking against submarines." That is the point against two and three isn't it? You are only to take prisoners if you can find out some useful thing from them?

A I think it is a matter of course, that it is perfectly natural that we should try to get as much intelligence material as possible, and since I couldn't take the whole crew prisoners on a U-boat, I have to confine myself to the most important person. I remove these people from further fighting, whereas the others may fight later. Of course, if I consider the limited room on a U-boat, I take only the important ones.

Q I don't want to take up a lot of time but Iwant you to tell me this:

Did I understand your explanation of the word "again" in the War Diary to be that you had drawn the attention of certain submarine Commanders by your telegrams during the Laconia incident, is that your explanation?

A No, not U-boat Commanders, and I believe this is referring to those four wireless messages which we have read on this matter during the preceding days, and that have been submitted to the Tribunal yesterday.

Q I put to you a moment ago a question and you said the "again" refers to the messages you have sent out during the Laconia incident? I think

H0128-0072

you agree with that, don't you? Don't be afraid to agree with what I say. When was that?

A Yesterday it was explained to me it was four wireless messages, an I assumed that the person was summarizing the whole event, and that was probably the way he mentioned it. He was a petty officer and I don't know what he meant in that connection at that time.

Q Now you say you had never heard of the Hitler and Oschina conversations which I put to you a few moments ago?

A No.

Q Therefore, one may assume, may one not, that Lieutenant Heisig, who gave evidence he had not heard of the Hitler and Oschina conversations either, don't you think he could not have heard about it?

A I assume it was out of the question.

Q Did you notice that Heisig said in his evidence that you put forward the same argument during a lecture he heard as Hitler put forward in his conversations with Oschina?

A First of all I want to state that Heisig here in this witness box had told the story differently than he did during his interrogation. Durin cross examination he has admitted that, I have not said anything about fighting against rescued personnel, but everything else he said is so un-clear that I don't attach much value to his credibility, and certainly he stated quite clearly that I had not done this by lecture but during discussions, which is of no importance, and, fourthly, it may be that the subject was opened dealing with new construction in America and the findin of crews for those new ships. It is possible.

Q Do you now say you agree you never opened any discussion having reference to the American Ship Building program and the difficulty of finding crews? Do you agree with Heisig on that?

H0128 - 0073

H0128-0074

A Thatwas in the German Press. It was full of it and everybody knew it regarding the ship building.

Q But the argument, I am suggesting to you, you know, was that the building program would be useless if you could destroy or frighten off sufficient navy merchant crews. That is the point in Hitler's conversation, and that Heisig said you said. Did you say that?

A I have always had the attitude that losses of crews, that replacements would be made difficult, that is a matter in my war diary, and perhaps I talked in a similar way before these cadets.

Q Would you look at page 37 of the Prosecution Document Book, page 76 in the German Translation?

A Page 37?

Q Page 37 is the English. It is an order dated in September of 1943. I just want you to look at the last sentence:

"In view of the desired destruction of ship's crews, their sinking is of great value."

A I haven't found the page yet.

Q I have the English - if you will excuse me it is 76 in the German.

A That can't be right.

Q Perhaps you would help me, Sergeant Major, would you?

(The place is indicated to the witness)

In the last sentence.--

A Yes, I have read it.

Q "In view of the desired destruction of ship's crews, their sinking is of great value, and it is continually pressing, the need for ships crews."

A Yes, of course, but by fighting it is is perfectly clear these rescue ships were heavily armed, they had air craft and were just aspossible to be sunk by a convoy as any other ships. If there were crews which we would have like others, it was, of course, our right to give an order that these rescue ships should be sunk. Apart from that they were used as traps for submarines.

Q On the question of the rightness or wrongness of sinking rescue ships, the destruction of ship's crews - Now I want to ask you one or two questions about Moehle. He commanded the U-boat operations from 1942 until

H0128-0075

the end of the war. That is nearly three years, and as he told us, he has a number of decorations for gallant service. Are you telling the Tribunal that Commander Moehle went on briefing submarine commanders on a completely mistaken basis for three years without any of your staff or yourself discovering this? You saw every U-boat commander when he came back.

A I am sorry that Captain Moehle was the only one who should have had doubts in connection with this order, as he declared here, and that he didn't clarify it right away, but unfortunately I can't think he could have had such doubt. He had the opportunity to clarify the matter and I don't know whether my staff or anybody else but the Submarine staff had any idea he had any doubt.

Q Now, I have a letter here, a letter from a widow of one of your Submarine commanders. I can't get the Commander and this is a letter from his widow. I want you to say what you think of a passage in it.

She says: In the second paragraph - "Captain Moehle syas he had not found any U-boat Commanders who has the supposed order to fire at defenseless seamen who were in distress at sea."

DR. KRANZBUEHLER: I object against the use of this letter. I think this is the sort of letter which has been ruled out as an exhibit and it isn't sworn, and it is a typical letter such as Mr. Justice Jackson repeatedly criticized.

SIR DAVID MAXWELL FYFE: The only point I make is this: The man himself has not come back. The widow can give information as to how he understood his orders before he went out, and I should have submitted it with probative value. I think in Article 19 it occurs, My Lord. I won't use it if there is the slightest doubt about it before the Tribunal.

H0128-0076

THE WITNESS: It isfull of incorrect statements, too.

THE PRESIDENT: Wait just a minute.

THE WITNESS: It isnot true.

DR. KRANZBUEHLER: Mr.President, I have only just finished reading this letter---

THE PRESIDENT: Well, the Tribunal is considering the matter at the moment.

DR. KRANZBUEHLER: May I just add one argument of mine first?

THE PRESIDENT: Well, we have heard your argument and we are considering the matter.

The Tribunal thinks that it isundesirable and that this document should not be used.

SIR DAVID MAXWELL FYFE: As your Lordship pleases.

BY SIR DAVID MAXWELL FYFE:

Q NowI want to just deal for one moment with a passage in your own document books which Dr. Kranzbuehler put to you yesterday. It is Volume 2, page 92, Exhibit 42. Before I ask you a question about it there is one point that I would like you to help me on. In your interrogation you said that on the 22nd of October -- you said that about two months after that order of the 17th of September you issued orders forbidding U-boats to surface at all, isthat right? You gave orders for bidd- U-boats to surface, is that right?

A That isn't possible at all in connection with a submarine; depending on whether it was day or night, or according to the situation of the weather, we would alter our orders and give them orders when they had to surface.

Q They weren't to surface after attacks, weren't to surface at all before or after attacks; isn't that the effect of your order?

A Of course submarines, particularly at night, had to be on the surface for attacks, but it depended on these things, and we were trying to take no risks.

Q Then two months later there was an order that they were to surface as little as possible and you tell me it was your order?

H0128-0077

A Wherever possible they were to avoid danger from the air.

Q Did you give orders as to surfacing?

A I have given them quite a number of orders, as I have said, considering the weather, considering the part of the sea they were in, and considering whether it was day or night. The order was different according to these factors. There were changes, too; if we had experiences showing that night was more dangerous than day, then we surfaced during the day. But then after that we might have the impression that it was better to surface during the day, because then one could at least see the attacking aircraft, so we changed.

Q But it is a fact that quite soon after this order the Allied air cover became so heavy that -- I quote your own words. You say: "Two months later there were no submarines at all who came in the situation to get up."

That is, as I understood it, surfacing became very difficult in view of the heavy nature of allied air attacks; is that right?

A Yes, they didn't have a chance to come to the surface in certain parts of the sea without being attacked forthwith, at once; that is just the point. But this is the difference in that connection: the submarines were alarmed, a general alarm, when otherwise we weren't and even when they had been alarmed completely there were still these losses and these difficulties which occurred.

Q Now I want you to look at Page 93. It is the page after the one I referred you to in Volume 2 of your document book, paragraph 1: "The percentage of sunk merchant vessels in convoys in 1941 amounted to 40 per cent; in the entire year of 1942 to barely 30 per cent; in the last quarter of 1942 to 57 per cent; in January, 1943, to about 65 per cent; in February to 70 per cent; and in March to 80 per cent. " Your worst period was the first three-quarters of 1942, isn't that so? That appears from your own figures.

A Which"worst period"? I don't understand.

Q Well, it is page 93, paragraph 1.

H0128 - 0078

A Yes, but how do you mean, "worst period"?

Q Well, the percentage of sunk merchant vessels of convoys in 1941 amounted to 40 per cent --

A You mean merchant ships?

Q Yes. I am reading your own War Diary, or rather the

H0128 - 0079

S.K.L. War Diary. "In the entire year of 1942 to barely 30 per cent -- "

A From convoys?

Q Convoys, yes. So that the worst period that you had was the first three-quarters of 1942?

A No. In 1942, as I have said when I described the entire situation, a large number of submarines were just outside the ports, such as Trinidad and the like. But we aren't mentioning this in this connection - we are only mentioning in this list the sinkings carried out by those boats which were fighting against convoys in the Atlantic.

Q But is it not right that these figures mean that your worst period was the first three-quarters of 1942? It must have been around 30 per cent.

A No, no, no. My most successful period was the year of 1942.

Q Well, how do you get it themost successful period if for the entire year of 1942 your percentage of sunk merchant vessels in convoys is only 30 per cent, whereas in January and February and March, 1943, it got up to 65, 70 and 80 per cent?

A Right. Of the merchant ships sunk in 1942, 30 per cent were sunk in the Atlantic, but the total figure was much larger than, forinstance, in the year of 1943 when 65 and 70 per cent were sunk; and that is simply because at that time in 1943 we could no longer sit outside a port like New York, for instance. This is only mentioning percentages of sinkings in the Atlantic from convoys.

Q You see what I am putting to you is this, that in 1942, when your percentage of convoys was low, when you had had that pressure that I have gone into with you before, there was every reason for you to issue an unequivocal order which would have the effect of getting those submarine commanders who wanted to destroy the crews of the ships. In 1943 your U-boats weren't surfacing, your convoy proportions had gone up, and there wasn't any reason to make your order more explicit. That is what I am suggesting to you, Defendant.

A I consider that that is quite wrong.

Q Now I just want to --

A This is the point, that was the situation that we said. Beginning in the summer of 1942 we had the experience of the suddenly increasing danger

H0128 - 0080

from the air. This danger was having its effect everywhere, on the sea -- and that includes those parts of the sea where submarines were not fighting convoys.

Q Now I just want you to help me on one other point. Dr. Kranzbuehler put to you yesterday that Kaditaenleutnant Eck said that if he had come back he would not have expected you to have objected or been angry with him for shooting up the crew of the Pileus. You said you know that Eck was carrying this order of yours in your locker when he did shoot up the crew of the Pileus?

A Yes, but I also know that this order didn't have the slightest effect regarding his decision as Eck is expressly saying his decision to shoot the crew had quite a different aim. His aim was to remove the wreckage because he was afraid for his boat just as for other boats which would have gone to pieces otherwise in this particular part of the sea. He stated emphatically and expressly that any connection in his thoughts with the order which he had aboard quite accidentally, referred to the "Laconia", and this condition did not exist.

Q Now you know there are two other cases before the Tribunal, the "Noreen Mary" and the "Antonico ", which are on pages 47 and 52 of the prosecutions decument book, where witnesses give specific evidence of the U-boat carrying out attacks on them when they are, in one case, on wreckage, and, in the other case, in the lifeboat. Will you look at the "Noreen Mary" on page 47 of the document book? The statement of the survivor is on page 49 and 50. He deals with this point, he says in the fourth paragraph -- page 85 of theGerman book, page 50 of the English one; I have got the English document; "I swam around until I came across the broken bow of our lifeboat which was upside down and managed to scramble on top of it. Even now the submarine did not submerge but deliberately steamed in my direction and when only about 60 to 70 yard s away fired directly at me with a short burst fromthe machine gun. As their intention was quite obvious I fell into the water and remained there until the submarine ceased firing, and submerged, after which I climbed back to the bottom of the boat."

H0128 - 0081

The statement by the Brazilian gentleman -- which you will find on page 52. Do you have it?

A Yes, I've got it.

Q Fifteen lines from the foot, he says: "The enemy ruthlessly machine-gunned the defenseless sailors in No. 2 lifeboat." Assuming -- of course one has to assume -- assume that Mr. McAlister and Signor De Oliveira Silva are speaking the truth, are you saying that these U-boat officers were acting on their own?

H0128-0082

A. It is possible. I can believe that subjectively they managed that; but I want to point out this night battle of the "Antonico", which lasted twenty minutes. It was quite possible that shots might have been assumed or shots directed against the ship could hit a rescuing vessel. At any rate, if during a night attack, during twenty minutes, some one is making a report that it is subjective -- and everyone know how different these reports are and everyone who know them will know how many errors will creep into them -- if, during such a night battle, the U-boat had wanted to destroy these people, then it wouldn't have left after twenty minutes as is stated in the report, particularly since the person is stating that he could hardly see the submarine in the darkness. These are all very vague statements.

In the case of the "Noreen Mary", it is quite similar. A large number of statements are made which are certainly not true; for instance, that the submsrine was supposed to have a swastika on its tower. Not a single submarine was painted in that way when it went to sea. And, if some one is near some wreckage or a lifeboat and shots are happening nearby, then he will always feel that he is being shot at. It was for that very reason that a number of cases of the Anglo-American side have been raised by us; not because we wanted to raise an accusation, but because we wanted to show how very s ceptical one has to be regarding these reports.

These are the only cases which are available here during five and a half years of war and considering the large number of attacks.

Q. Yes, and for, of course, the two and a half of these years that the submarine commanders have been shooting up survivors, you're not likely to get many cases, are you? I just want to ask you one other point --

A. Commanders of submarines, with the exception of the case Eck, did in no case shoot down shipwrecked persons -- in no case.

Q. That's what you say.

A. That's not true. It's not true. There's no case proved. To the contrary, with great devotion did we rescue. Never has there been an inclinatio amongst the submarine personnel that shipwrecked personnel should be proceeded against, with the exception of the case Eck, for certain clear-cut reasons.

H0128 - 0083

Q. Well, now, tell me this: Did you know that the log of the Athenia was faked, after she came in?

A. No, it wasn't faked. There was a clear order that the case of the Athenia should be kept secret for political reasons and, as a result, the log had to be altered.

Q. I see. You don't like the word "faked". Well, I'll use the word "changed"; that a page was cut out of the log and a false page had been put in. Did you know about that?

A. I can't tell you that to-day. It's possible. Probably Captain Lemm, either from me or my staff, received the order that the case is to be kept a secret; and that order he certainly must have received. And following that, he or the flotilla would have taken the log, which went to ten departments of the navy, and altered it correspondingly. What else could he do; he had no choice. If for political reasons --

Q. I want to know, was it your order and with your knowledge that that log was altered from, I suppose, the truth into the falsity in which it exists today? That is a simple question. Can you answer it?

A. Yes. Either it was done by my order or, if it hadn't been done, then I would have ordered it because the political instructions existed that it was to be kept secret. The fighting men had no other choice, therefore, but to alter the document. Afterwards, after the case happened, commanders of the U-boats had orders to make any false entries. Especially in the case such as the Athenia, it was ordered afterwards that it was to be kept secret and nothing must appear in the log.

Q. Well, now, I have only one other point to deal with you, and I can deal with it quite shortly. You were a firm adherent of ideological education for service personnel, were you not?

A. Yes, and I can explain my reasons.

Q. Well, I just want to get this, and then you can explain your reasons afterwards. You thought it consense that a soldier should have no politics, didn't you? If you want to --

A. But, of course, yes. The soldier had nothing to do with politics, but,

H0128-0084

on the other hand, he had to stand behind his home state during the war.

Q. And you wanted your commanders to indoctrinate the navy with Nazi ideology, didn't you?

A. I wished that commanders should tell the units that the German nation was the source of strength for our warfare, and that, since we were the beneficiaries of this unity, we should take care of that unity; that that source should remain in existence.

During the World War we had made the worst experiences in that particular respect. That disintegration of the nation would have had its effect on the troops at once; that is quite clear.

Q. Look at page 7 in the English document book. I think it puts it almost exactly as in my question.

A. Seven?

Q. Yes, seven. The last sentence from the very start.

"The whole of the officers' corps must be so indoctrinated that it feels itself co-responsible for the National Socialist state in its entirety. The officer is the exponent of the state. The idle chatter that the officer is non-political is sheer nonsense."

That's you view, isn't it?

A. I had written that. I have said that, but you've also got to read the first sentence, which says that our discipline and our strength is as high as a tower and it's above that of 1918. The reason is because the nation is behind us.

If that hadn't been the case, then our troops would have fallen apart; that's the reason why I said that again and again, the same principle.

Q. Tell me, how many men were you attempting to apply this to or how many men had you got in the Navy on the 15th of February, 1944? I want to see what body you were trying to effect. How many? A quarter of a million?

A. More, 600,000 or 700,000.

Q. Now, I would just like you to turn to the next page, page 8 in the British document book, which gives your speech on Heroes' Day, the 12th of March, 1944. You say this:

H0128-0085

"What would have become of our country today if the Fuehrer had not united as under National Socialism, split into parties, beset with the spreading poison of Jewry and vulnerable to it, and letting as a defense our present uncompromising world outlook? We would long since have succumbed to the burdens of this war and be subject to the merciless destruction of our adversaires."

What did you mean by the "spreading poison of Jewry?"

Q. I wanted to say that we were living in a very large community and that this represented strength.

Q. No, that's not what I asked.

A. That all forces should serve that community.

Q. I'm asking you, what did you mean by the "spreading poison of Jewry"? It's your phrase, and you tell us what you meant by it.

A. I could imagine that, considering the considerable burden of bombing attacks, the holding out of the population in the towns would be more difficult if such an influence was taking place; that's what I wanted to say.

Q. Well, now, can you tell me again; what do you mean by the "spreading poison of Jewry?"

A. It means that the strength to hold out of the people, in which I was interested as a soldier in the battle of the nations for life and death; that that might have had a disintegrating effect.

Q. Well, now, that's what I want to know. You were the supreme commander and indoctrinated 600,000 or 700,000 men. Why were you conveying to them that Jews were a spreading poison in the party politics? Why was that? What was it that you objected to Jews; that made you think that they had a bad effect on Germany?

A. That statement was made during my speech on Heroes' Day. It just show that I was of the opinion that the strength of holding out of the nation could be preserved better than if there were Jewish component parts in the nation.

Q. This sort of talk, "spreading poison of Jewry" produced the attitude in the mind which caused the death of five or six million Jews in these last few years. Do you say that you knew nothing about the action and the intention

H0128 - 0086

"What would have become of our country today if the Fuehrer had not united as under National Socialism, split into parties, beset with the spreading poison of Jewry and vulnerable to it, and letting as a defense our present uncompromising world outlook? We would long since have succumbed to the burdens of this war and be subject to the merciless destruction of our adversaires."

What did you mean by the "spreading poison of Jewry?"

Q. I wanted to say that we were living in a very large community and that this represented strength.

Q. No, that's not what I asked.

A. That all forces should serve that community.

Q. I'm asking you, what did you mean by the "spreading poison of Jewry"? It's your phrase, and you tell us what you meant by it.

A. I could imagine that, considering the considerable burden of bombing attacks, the holding out of the population in the towns would be more difficult if such an influence was taking place; that's what I wanted to say.

Q. Well, now, can you tell me again; what do you mean by the "spreading poison of Jewry?"

A. It means that the strength to hold out of the people, in which I was interested as a soldier in the battle of the nations for life and death; that that might have had a disintegrating effect.

Q. Well, now, that's what I want to know. You were the supreme commander and indoctrinated 600,000 or 700,000 men. Why were you conveying to them that Jews were a spreading poison in the party politics? Why was that? What was it that you objected to Jews; that made you think that they had a bad effect on Germany?

A. That statement was made during my speech on Heroes' Day. It just show that I was of the opinion that the strength of holding out of the nation could be preserved better than if there were Jewish component parts in the nation.

Q. This sort of talk, "spreading poison of Jewry" produced the attitude in the mind which caused the death of five or six million Jews in these last few years. Do you say that you knew nothing about the action and the intention

H0128-0087

to do away with and exterminate the Jews?

A. Yes, of course, I'm saying that! I didn't know anything at all about it. If such a statement was made, then that doesn't furnish evidence that I knew about any methods which were used against Jewry.

Q. No, but I'm putting --

A. This happened in '43.

Q. Well, what I'm putting to you is that you are joining in the hunt against this unfortunate section of your community and leading six or seven hundred thousand of the Navy on the same hunt.

Now, just look at page 76 of the document book in this last reference to you -- page 76.

A. Nobody amongst my men was thinking of employing force against Jews, not a single one, and nobody can draw that conclusion from that sentence.

Q. Well, now, just look at page 76. This is where you're dealing with the promotion of under-officers and men who have shown themselves to be personalities in warfare. You, first of all, say:

"I declare that the leaders of units responsible for ratings and the flotilla commanders and other commanders superior to them shoulddinterest themselves more in the promotion of these under-officers and men who have shown in special situations in the war that, thanks to their inner attitude and firmness, by energetic and inner drive, in short, owing to their gifts of personalities, they are capable of taking right decisions independently and of carrying them out without wavering in their aim and with willing acceptance of responsibility.

"An example: In a prison camp of the auxiliary cruiser CORMORAU in Australia, a petty officer, acting as camp senior officer, had all Communists, who made themselves noticeable among the inmates of the camps, systematically done away with in such a way that the guards did not notice. This petty officer is sure of my full recognition for his decision and his execution and, after his return, I shall promote him with all means, as he has shown he is fitted to be a leader."

Was that your idea of leadership in this National Socialist indoctrinated

H0128 - 0088

navy; that he should murder political opponents in a way that wouldn't be found out by the guard?

A. No, that's different. It had been reported to me that there was a spy who was to be put amongst new crews and who should listen to them, and then pass information on to the enemy. It would have been the result of that, based on that information, that submarines would now have been lost; and it was then that the senior man, an uncommissioned officer in that camp, decided to remove that man as a traitor. That is what was reported to me; something which I shall prove by means of a witness. In my opinion, and every nation will recognize that, that has been acted upon under great responsibility and in a very difficult situation.

Q. Why didn't you say that, defendant? If you had stated that this man had killed a spy who had endangered the spreading of information, I wouldn't have put this to you. But what you say is that it was Communists who made themselves noticeable and this man had killed them without knowledge of the guard. Why do you put Communists in your order if you mean a spy?

A. I think this is an order from a Baltic station. I had been told, and that's a fact, that it was a spy, and it's something that a witness will prove. What reasons there were -- perhaps reasons of counter-intelligence, not to divulge that. I never entered into it.

Q. Were you --

A. I am responsible for it.

Q. Are you putting the responsibility for this order on one of your junior officers? Are you saying it was one of your junior officers who put the order out like this? It wasn't what you meant at all; is that what you are saying?

A. I have merely said how the order came about; how it happened to be like this. I have never yet refused the responsibility.

SIR DAVID MAXWELL-FYFE: All right.

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken)

H0128 - 0089

THE PRESIDENT: Is there any further cross examination?

COLONEL POKROVSKY: My Lord, the Soviet Prosecution has several questions to sak of the defendant Doenitz.

BY COLONEL POKROVSKY:

Q Defendant Doenitz, your address to the German people and your order to the armed forces in connection with Hitler's death were composed by you on the 30th of April 1945, isn't taht so?

A Yes.

Q In these documents you informed the people that Hitler's successor appointed by Hitler himself, was you. That is correct, isn't it?

A Yes.

Q Did you ask yourself then for what particular reason Hitler selecte you?

A Yes, I put that question to myself when I received that telegram, and I came to the conclusion that after tje Reichsmarshal had been removed, I was the senior officer of an independant branch of the armed forces, and that that was the reason.

Q In your address to the Army and to the people, you demanded continuation of military operations, and all those who were opposed to resistance were called traitors and cowards, isn't that so?

A Yes.

Q A few days afterwards, you gave an order to Keitel to capitulate unconditionally, isn't that right?

A Yes. I said clearly in the first order that I would like to fight in the East until troops and refugees could be rescues from the East to the West, and that I would not fight one moment longer. That was my intention, and that is clearly expressed in that order.

Q By the way, it isn't clearly stated in this order, but it is not so important -- do you agree that on the 30th of April --

A I --

Q First listen to my question. Do you agree with the fact that on the 30th of April also, right on the day when you published both documents that we are talking about now, it was absolutely clear that further resistance of

H0128 - 0090

Hitlerite Germany was absolutely valueless and useless?

Do you understand my question?

A Yes, I understood the question, and I have to say the following, tha I had to continue fighting in the East in order to cover the refugees who were moving to the West. That is clearly stated. I said that we would continue to fi in the East until hundreds and thousands of families from the German eastern ar could be transferred to the West.

Q Still, you didn't answer my question, did you, even though it was very clearly put. I can repeat it once again so that you can manage to understa it. Do you agree with the fact that already on the 30th of April it was absolutely clear that Germany had no further prospects, and that further resistance of Hitlerite Germany was absolutely useless? Do you agree with that?

A No, that was not clear. From the military point of view the war was absolutely lost, and there was only the problem then of saving as many human beings as possible, and therefore we had to keep up our resistance in the East, b that is why that resistance in the East had a purpose.

H0128-0091

Q Very well, I understood you, but will you deny that your address which called to continue war, led to further bloodshed?

A That is extremely small, compared to the one or - - -

Q One moment, please. One moment please, will you wait, Doenitz. Don't try and make any comparisons. First answer and them explain. This is the order that we are going under. First yes or no and then an explanation, please. You unterstood me?

A Of course; in the course of the fighting during the few days losses did occur but they were necessary in order to save hundreds of thousands of refugees.

Q You didn't answer my question. I repeat it for the third time.

THE PRESIDENT: He did answer; he said "yes, that bloodshed would be caused That is an answer to your question.

COLONEL POKROVSKY. Thank you.

BY COLONEL POKROVSKY:

Q I would like you to explain exactly the question of whether you look upon yourself, first and foremost, as a politician or do you look upon yourself as a soldier who disobeyed direct orders of his own superiors without any analysis of of political meaning and content of such orders?

A I don't know that question - - in generality, as chief of the state from the 1st of May on, I was a political man.

Q And before that time?

A And before, a field soldier.

Q On the 8th of May 1946 at sixteen hours thirty-five minutes, in this hall you mentioned. "As a soldier I did not have in mind such political considerations which might have been in existence." On the 10th of May, at twelve hours thirty-five minutes, here, you said, when the question of submarine warfare was taken up: "All this concerns political aims but I, as a soldier, was engaged in military problems." Isn't that so?

A Yes, it is correct. I said before the 1st of May 1945, I was a soldier, and as soon as I became the head of the state I had to relinquish the supreme command of the Navy because I became the chief of state and not a political personality.

H0128 - 0092

Q Sir David Maxwell-Fyfe, about fifteen minutes ago, addressed you also and referred to two documents, and in particular to document GB-186, D-640, and he cited one sentence out of this, quoted one sentence which contradicts greatly what you said just now. You remember this sentence "nonsensical chatter"?

A Yes, I know what you mean.

Q I want to ask you: How can you reconcile these two contradictory statements, the statement about unnecessary chatter about the fact that the officer is not a politician. This statement took place on the 15th of February 1944, at the time when you were not the supreme head of the state. Isn't that so?

A If a soldier during the war stands firmly behind his mission and his government, that doesn't make him a politician and that is said in that sentence that was meant by that sentence.

Q All right. We will be more exact about it, whether this is really the fact. You, several times in a very different manner right here at the Tribunal meeting, testified thay for many years before the war and during the war, you were indoctrinating the navy in the spirit of pure idealism and firm respect to the customs and laws of war. Is that so?

A Right, yes.

Q In particular, on the 9th of May, yesterday, at twelve hours fifty-four minutes, you said "I indroctrinated the submarine fleet in the pure idealism and I continued such indoctrination during the war. It was necessary for me to achieve high morale." Five minutes after on the same day, you said, in speaking about the navy: "I never could tolerate giving orders to such people which would be contradictory to such morale and, of course, it is beyond the question that I myself could give such an order. You acknowledge that those were your words, or approximately your words, considering the inexactness of translation; isn't that so?

A Of course, yes, that is what I said.

Q I would like to have you take a look in the document which is in your possession now, the document presented by your defense counsel, Doenitz 91. In this document, your defense counsel presents an excerpt from the testimony, sworn testimony - - - an affidavit made by Dr. Joachim Rudolphi. In order now not to consume unnecessary time, I would like you to tell us briefly in one word, yes or

H0128 - 0093

no, whether Rudolphi is correct in his testimony; that you were always decisively protesting against introducing into the armed forces of Germany so-called "People's Military Tribunals?" Did you understand me?

A I was against any decision of legal cases from the navy to other courts. I said that one has to carry the responsibility for a branch of the armed forces and in doing so also has to have the judiciary power. That is what it means.

Q And you are familiar with Rudolphi's affidavit?

A Yes, I know it.

Q You remember, on the first page in that excerpt, which has been presented by you to the Tribunal, it is said there that "In the beginning, early in the summer of 1943, the first threatening attempt to undermine the non-political system of the armed forces was initiated." Is Rudolphi correct in explaining this question and is it true that you were against this attempt to introduce special political courts into the navy and armed forces?

A According to my recollection, I protested again in the summer 1943 but early in the summer things were already going on, may be right.

Q Do you acknowledge, Doenitz, or not that this so-called people's court had to do with what Rudolphi considers as the smallest hint towards a political attack?

That is his sentence which you can find on the first page in document D-91.

A I have already stated, for me the point of view was the following, but I wanted to keep the soldiers under my own jurisdiction. I did not mean to judge and I could not authentically judge the proceedings outside of the Navy of courts outside of the navy, because I wouldn't know anything about that. My point was that my soldiers should be under the jurisdiction of the navy.

Q For also crimes, including political; isn't that so? Did I understand you correctly?

A Yes, of course, that was intended and I have stated that I was of the opinion that they should remain under military jurisdiction.

Q Will you deny, Doenitz, that you always were preaching and always were encouraging murder of defenseless people, among those who were members of the armed forces, due to purely political reasons and you were looking upon such murders as the acts of military valor and heroism?

H0128-0094

A I don't understand you. I don't know what you mean.

Q You didn't understand my question?

A No, I haven't understood it. I didn't understand what you meant by the question.

Q I can repeat it. Perhaps it will be clearer to you. I am asking you: Will you deny the fact that you preached in favor of murders of those members of the armed forces, by other members of other forces, and the members who had to be killed were killed purely for political reasons? Now, is the question clear to you?

THE PRESIDENT: The Tribunal doesn't find your question quite clear?

COLONEL POKROVSKY: What I have in mind, my Lord, is the order No. 19, for the Baltic Fleet, which was in part ecplained by Sir David Maxwell Fyfe. There is one point of this order and permits to clarify the motives for publishing and promulgating this order. It is said in there this way - - - one idea is expressed in a cery clear manner - - - and with your permission, I shall read one paragraph from this document.

H0128-0095

For instance, it is said in Order Number 19:

"In the prisoner-of-war camp from --

THE PRESIDENT: Which paragraph?

COLONEL POKROVSKY: The paragraph before the last of the document D-650, page 4 of the English text. It is the last paragraph of the third page of the English copy.

THE PRESIDENT: It was read already in cross examination.

COLONEL POKROVSKY: This particular part wasn't read in the cross examination, and it is really very important for the case.

THE PRESIDENT: We have just heard this very question, this very example, read by Sir David Maxwell-Fyfe, not a half an hour ago.

COLONEL POKROVSKY: But Sir David Maxwell-Fyfe in reading this example did not read one particular sentence which is of great importance to me, and which clarifies the matter finally, and that is the reason why I permitted myself to come back once again to this particular passage. It is said ih there --

THE PRESIDENT: What sentence are you referring to?

COLONEL POKROVSKY: The first sentence in the second paragraph from the end. It is the paragraph which begins, "For example, in the prisoner-of-war camp --

THE PRESIDENT: You are entirely wrong. He read the whole of the paragraph. Sir David Maxwell-Fyfe read the whole of the paragraph. Sir David Maxwell-Fyfe read the whole of the paragraph.

COLONEL POKROVSKY: When, with your permission, I shall read these few words, then you will convince yourself that these particular words were not read, and they are very important.

THE PRESIDENT: Colonel Pokrovsky, I have a note in my notebook made at the time, which shows that the whole of this was read; that the Defendant was cross examined about the meaning of the word "Communist"; and that he explained it by saying that he was referring to a spy among the crew who might give away submarine secrets. The whole matter was gone into fully by Sir David Maxwell-Fyfe, and the Tribunal does not wish to hear any more about it.

H0128 - 0096

COLONEL POKROVSKY: It is absolutely necessary for me to read two words out of this sentence which were not read into the record here, and I ask your permission to read these two words.

THE PRESIDENT: Which two words do you say were not read? State the two words.

COLONEL POKROVSKY: "Plan" or "systematically." That is, according to a certain plan, and also "noticeable." They are not talking about one particul instance, but they are talking about the whole definite plan.

THE PRESIDENT: Yes, but that was all read, Colonel Pokrovsky; You must have missed it.

COLONEL POKROVSKY: It wasn't read. Of course Sir David may have omitted that.

THE PRESIDENT: That was read by Sir David Maxwell-Fyfe and put to the witness, to the Defendant.

COLONEL POKROVSKY: Perhaps Sir David Maxwell-Fyfe might have accidentally omitted this, but it is really very important for me, because Doenitz mentioned here, testified here, to the conversation about killing only one spy, but really what is meant here is that there was a plan to exterminate all Communists.

THE PRESIDENT: It is exactly what Sir David Maxwell-Fyfe put to the witness. He said "How can you say that this refers to a case of spies or one spy, when it is referring to all Communists?" It is exactly the question he put to him.

COLONEL POKROVSKY: Perhaps I didn't understand quite correctly what our interpreter translated, but in our translation this wasn't mentioned.

Then with your permission I will go to the next question.

BY COLONEL POKROVSKY:

Q Will you deny, Doenitz, that in this order, as only one example of high military valor, that military valor which serves as a basis or the reason for extraordinary promotion of non-commissioned officers, that you used, as one example, systematic murders of people for political reasons? Do you deny that this order was correctly understood?

A No, that is quite wrong. That order refers to one incident in a prison camp, and it should express in what serious conflict of

H0128 - 0097

responsibility that camp commander was, and that from the point of view of responsibility he had acted correctly in removing that Communist, in the interest of the German nation, as a spy. It would have been easier for him and simpler if he just would have let things go. That would have caused a damage and the loss of U-boats. He knew that he would have been put before the responsibile authorities after his return home. That is the reason why I gave the order.

Q Perhaps you will agree with the fact that the incidents or the happenings as you explain them now are absolutely different from what are written in your order.

THE PRESIDENT: I have already told you that the Tribunal does not wish to hear further cross examination upon this subject. You are now continuing to do that, and I must draw your attention again clearly to the ruling of the Tribunal, that the Tribunal will not hear further cross examination upon this subject.

BY COLONEL POKROVSKY:

Q In light of this document, how do you look upon your statements about some alleged objections in

H0128-0098

principle against the special political courts--that is, special political considerations which are being sworn to in this affidavit by Dr. Rudolphi? How do you reconcile this contradiction?

A I didn't understand what you said.

Q You say that here the document deals not with political acts, while in the order it is altogether different. The order deals with political questions, and Dr. Rudolphi testified to the fact that you were against introducing political courts into the army and the navy. Obviously there is contradiction in terms here, and I would like to have this contradiction explained.

A I do not see any contradiction, because Dr. Rudolphi says that I had been against the method that legal cases should be turned over to courts outside of the navy. In thecase of Comorau we deal with an action of the commander of that camp in a camp far away from home. He came to this action certainly after very grave doubts and considerations, which at home would have brought it before a military court. He did it, however, because of reasons of warfare and to stop the loss of submarines by treason he considered it necessary. Those are two entirely different things. Here we deal with an individual case in the camp of Comorau.

Q What you are testifying to now is a repetition of what you said before, and, as you heard, the Tribunal does not want to listen to any more. This is really not an answer to my question.

A Yes. I can't say anything else in answering that question but the truth, such as I have shown it.

Q Of course our ideas of truth may be altogether different. I, for instance, look upon this question in an altogether different manner.

A Excuse me, please. I am under oath here, and you do not want to accuse me of telling an untruth, do you?

Q We are not talking about false testimony, but we are talking about a different approach to the idea of truth. I, for instance, consider by this order --

A I cannot agree with that.

Q -- that you revealed yourself --

H0128 - 0099

THE PRESIDENT: (Interposing) Will you kindly put the question if you want to put a question?

COLONEL POKROVSKY: I want to ask him one question, my Lord, and I must explain to him why I am asking this question.

BY COLONEL POKROVSKY:

Q I consider this order of yourself as a direct revelation of your loyalty to Fascism, and in connection with this I want to ask you whether you consider that, because of the fact that you revealed yourself as a fanatical follower of Fascism and Fascist ideas, that Hitler made his choice of you as his successor because you were known to Hitler as a fanatical follower who was capable of inciting the Army to any crime; and that still you would be calling this crime that you are inciting the Army to perform pure idealism.

A Well, I can only answer to that that I don't know. I have already explained that the legitimate successor would have been the Reichsmarshal, but through a regrettable incident a few days before, I was appointed. He was removed, and then I was the next senior officer in command of an independent branch of the armed forces.

I believe that that element was the determining element. That the Fuehrer had confidence in me may have had something to do with it, indeed.

COLONEL POKROVSKY: The Soviet Prosecution, my Lord, has no more questions to ask of this Defendant.

H0128-0100

THE PRESIDENT : Dr. Kranzbuehler, do you want to re-examine ?

DR. KRANSBUHLER : I should like to put a few more questions, Mr. Presiedent.

REDIRECAT EXAMINATION

BY DR. KRANSBUHLER :

Q : Grand Admiral, during the cross examination by Sir David Maxwell-Fyfe, you were asked about your knowledge of conditions in concentration camps ; and you wanted to make an additional statement, which you could not do at the time.

What personal connections did you have with anz inmates of concentration camps, or did you have any at all ?

A : I had no connections with anybody, not with any person who had gotten into a concentration damp, with the exception of Pastor Niemoeller. Pastor Niemoeller was a former comrade of mine from the navy. When my last son had been killed, he expressed his sympathy, and at that occasion, I, in thanking him, asked how he was.

Q : When was that ?

A : The summer of 1944. And thereupon I received the answer that he was all right.

Q : Did you write him directly, or how ?

A : No. That message I received through a third person.

Q : Was that the only message you received from a concentration camp ?

A : Yes, the only one.

Q : In the course of the cross examination, a statement by Captain Assmann was put to you about a conference with the Fuehrer of May, 1943. Do you remember its contents ? You are alleged to have said that in view of the present situation, it was desirable that Germany should come into the possession of Spain and Gibraltar.

Did you make a positive suggestion in that direction ? One danno see that from the report.

A : Of course, when I discussed the situation, I mentioned the narrow bounds of the Bay of Biscay, and that it would be desirable if we could use a larger area to start our U-boats. Nobody at that time gave any serious thought to any enterprise in the direction of Spain, regardless of whether it might be with the consent of Spain or without it. It was quite obvious that our forces were not at all sufficient for that.

On the other hand, it is quite well understood if I speak about the concern about that narrow area. But I should say it would have been better if that area had been wider. That is what I meant by that statement. So that referred to U-boat warfare and not to any undertaking against Spain on land. I certainly cannot make any suggestion as a naval officer concerning land actions.

Q : In connection with the sinking of the Athenia, it has been hinted that your statement was considered an excuse; that is, that the commanding officer of the submarine confused the Athenia with an auxiliary cruiser. I should like to put to you an excerpt from the war diary of the same commanding officer, and I want you to confirm that it is really from the same commanding officer.

I shall read from the document of the Prosecution B.G. 222, on Page142, in my document book, Volume 3. It is an excerpt from the war diary of the submarine U-30. It is dated the 11th of September, 1939.

" Sighted a vessel with lights dimmed. Trailed. In zig-zag course recognized as merchant ship. Requested to stop by Morse lantern. Steamer signals 'not understood", tries to escape in the thick squall and sends out SOS 'chased by submarine " and position by radiotelegraphy. Gave 'stop' signal by radiotelegraphy and Morse lantern.

"Run ahead. Fired 5 shots with machine gun C/30 across the bow. Steamer doesnot react. Turns partly, directly toward the boat. Sends 'Still chased'. " Therefore, fire opened from aft bearing

H0128-0101

H0128-0102

with 8,8 cm. English steamer 'Blairlogie' 4425 tons. After 18 shots were fired and three hits, the steamer stops. The crew boards the boats. Last message by radiotelegraphy : 'Shelled, taking the boats'. Fire immediately halted when an emergency light was shown and steamer stopped. Went to the life boats, gave an order to pull away toward the south. Steamer sunk by torpedo. Afterwards both ship crews supplied with Steinhaeger and cigarettes. 32 men in two boats. Red stars were shot until it became light. Since the American steamer 'American Skipper' was nearby, we departed. Crew was rescued."

Can you confirm, Grand Admiral, that this was an entry by the commanding officer of the same U-boat who nine days before had torpedoed the Athenia ?

A : Yes, that is the same commander, and on the same trip, where shortly before, he was a victim of that error.

Q : In the course of the cross examination, once more, very definitely the statement was made, or the allegation made that you had sent a destrucktion order to U-boat commanders. I should like to put to you a letter which is signed by various U-boat commanders. You know the letter and know the signatures, and I should like to ask you to tell me whether the U-boat commanders who signed before September, 1942-- that is, before your alleged order--were captured afterwards.

I am reading from Volume 2, Page ØØ 99 of the document book Doenitz 53, which I have already submitted to the Tribunal. I received it through the British War Ministry and the Secretary-General of the Court. The date is the 18th of January, 1946, and the text is as follows :

" The commanders now here in this camp and who signed this letter, of U-boats that were active on the front want to give the following statement and express the request that this statement should be forwarded to the International Military Tribunal in Nurnberg.

" From the press and radio, we were informed that Grand Admiral Doenitz is charged with having issued the order to destry

H0128-0103

survivors of torpedoed ships and not to take any prisoners.

" The undersigned state under oath that neither in writing nor orally was such an order ever given by Grand Admiral Doenitz. The order was in force reasons of security of the boat, after torpedoeing, one culd not surface. The reason for that was that was that if the boat would surface for a rescue action, according to our experience during the first years of the war, we had to expeckt our own destrick/tion. This order could not be misunderstood. It has never been regarded as an order to annihilate shipwrecked crews.

" The undersigned declare that the German navy has always been educated by their leaders to respect the written and unwritten laws and rules of the sea. We have always regarded it as our honor to obey these laws and to put up a chivalrous fight while in action."

Following are the signatures of 67 German submarine commanders who are at present in British prisons of war.

I ask you, Grand Admiral, do you know these signatures ? Were these commanders captured before Sptember, 1942, or after September, 1942 ?

A Most of them beyond doubt were captured after September, 1942. In order to examine that from both sides, I should like to see the list again. But most of them beyond doubt were captured after September, 1942.

DR. KRANSBUEHLER : I have no further questions, then.

DR. LATERNSER (counsel for the General Staff and the O.K.W.) Mr. President, I should like to deal with only one point which came up during the cross examination.

BY DR. LATERNSER :

Q Grand Admiral, during the cross examination, you have stated that you were present at the briefing conferences on the 19 th and the 22nd of February, 1945, and you said --

A (interposing) I believe that that date is here on the list. I do not know at this moment.

H0128-0104

Q I marked it down, and you will find out right away why I am asking.

During the conference of the 19th of February, Hitler is alleged to have made the suggestion to leave the Geneva Convention. I ask you now to tell me which high military leaders were present during that conference.

H0128-0105

A I believe we are confronted with a mistake here. I did not hear tha question or suggestion out of the mouth of the Fuehrer, but I was told about it through a naval officer, who was always present during these briefing conferences. Therefore, I do not know for certain whether that date is correct, and I do not know who was present when the Fuehrer first made that statement.

In any case, the matter was again discussed the next day, or two days thereafter, and then I believe the Reichsmarshal, and of course Jodl and Field Marshal Keitel, were present. At any rate, the armed forces were all against it and, in my recollection, the Fuehrer, because he saw our rejection, did not do it it

DR. LATERNSER: I have no further questions.

THE PRESIDENT: The defendant may return to the dock.

DR. KRANZBUEHLER: Mr. President, after the experience of the cross-examination of today, I consider it proper to submit my documents to the Tribunal now, if that pleases the Tribunal, before I call further witnesses. I believe that I car shorten the questioning of the witness thereby, and that it will be more easily understood.

THE PRESIDENT: Very well, Dr. Kranzbuehler.

DR. KRANZBUEHLER: May I first remind the Tribunal that in the document book of the prosecution GB-224 and GB-191 contain the general accusations against naval warfare upon which the following documents which I submit are based. The documents concerning these general accusations are in document book 3 and 4.

First, I submit Doenitz-54. I don't need to read it because it has alread been mentioned.

Then, I ask the Tribunal to take official notice of the German Prize Ordinance, and excerpt of which can be found on page 137. I should like to point out that Article 74 is, word for wrod, according to the regulations of the London protocols.

May I point out that as shown on page 138, that prize ordinance was not signed by the Supreme Commander of the Navy, That is a contribution to the question as to whether the Supreme Commander of the Navy was a member of the Reich Government, He had no authority to sign that.

H0128-0106

The next document which I submit is Doenitz-55. That is the order of 3 September 1939, by which the U-boats went out to war.

I do not know whether these documents are so well known to the Tribunal that I can mention them together, or whether it is necessary to read parts of them.

THE PRESIDENT: I think you might mention them together, really, specifyi shortly what they relate to.

DR. KRANZBUEHLER: Yes, sir.

The order of the 3rd of September directs the ships to pay strict attention to all laws and rules of naval warfare. Furthermore, there is consideratio of a preparatory order for the taking of severe measures, and this order is on page 144. Since I shall refer to that later in examining the witness, I do not have to point it out now.

I should like to read to the Tribunal from an English document, to show that the boats were really acting according to these orders. It is document GB-191. It is in the original on page 5. That sentence is not in the English excer and that is why I will read it in English, from the original:

"Thus the Germans started this ordinance, which was at any rate, a clear reasonable, and not inhuman document."

Mr. President, it is not copied there, it is not in the document book of the prosecution. Therefore, I read it from the original which the prosecution ha submitted.

"German submarine commanders, with some exceptions, behaved in accordance with its provisions during the first months of the war. Indeed, in one case, a submarine had ordered the crew of a trawler to take to their boat if the ship wa to be sunk. But when the commander saw the state of the boat, he said, 'Dirty me in that boat. You English are no good sending a ship to sea with a boat like tha And the skipper was told to reembark his crew on the trawler and make for home a full speed, with a bottle of German Gin and the submarine commander's compliment

That is an English statement taken out of the document of the prosecution.

My next document is Doenitz-56, an excerpt from the war diary of the Naval War Command of 9 September 1939, at page 141.

"English information office disseminates the news through Reuter that Ger-

H0128-0107

many has opened unlimited submarine warfare."

Then, As Doenitz-57, on page 143, I should like to submit to the Tribuna the experiences which the Naval War Command had in submarine warfare up until that date. It is an entry of the 21st of September 1939, in the war diary of th Naval War Command. I read under the figure "2":

"The commanders of submarines which had returned report the following va luable experiences:

"(b) English, party also neutral steamers, strong zig-zags, partly dimme lights. English steamer, when stopped, immediately radios SOS with exact positi Thereupon commitment of English planes to fight submarines.

H0128-0108

"(c) English steamers have repeatedly tried to escape. Some steamers are armed, one steamer returned fire.

"(d) Up to now no misuse of neutral steamers found."

The document on page 144 of the document book has already been submitted. It is an excerpt from GB-222, war diary of the Submarine U 30, of the 14th of September. I will only read a few sentences from the beginning:

"Smoke clouds. Steamer in strong zig-zag. Eastern course. Ran toward her. When recognized, turns to counter-course and signals SOS.

"English steamer Fanad Head, 5200 tons, bound for Belfast.

"Pursued at full speed. Since steamer does not react to order to stop, a shot fired across her bow from a distance of 2000 meters. Steamer stops. Crew takes to the boats. Boats pulled out of the danger zone."

Then it shows how the submarine, on the basis of a wireless message of the steamer, was attacked by airplanes, what difficulties it had in getting the prize crew on board again, and how, in spite of the bombing attacks of the planes, it did not sink the steamer before two English officers, who had still been on deck, had jumped overboard and had been rescued by the submarine. The depth charge pursuit lasted for ten hours.

The next document, Doenitz-58, shows that merchantmen proceeded aggressively against submarines; and that also is an excerpt from the war diary of the Naval War Command.

I read the entry of the 24th of September:

"Flag Officer, U-boat, reports that on September 6 the english steamer Manaar, on being told to stop by U-38 after a warning shot, tried to escape. Steamer sent wireless report and opened fire from Hockgeschuetz. Withdrawn from ship only after four or five hits, then sank it."

Then, another report of 22 September:

"English reports that when the English steamer Akenside was sunk, a German U-boat had been rammed by a fishing boat."

From the document of the prosecution GB-193, which is copied on page 147, I should only like to point out the considerations, from the point of view of the Naval War Command, as to radio messages.

H0128-0109

I read from Figure 2 two sentences, beginning with the second:

"In almost every instance English boats on sighting U-boats have sent out wireless SOS calls and stated their position. Following these SOS calls by the ship, a certain time later, there always appeared English airplanes, which makes it positive that with the English it is a matter of a military measure and organization by an order. The SOS calls in connection with a given position may therefore be considered as military information, even as resistance."

The next document, Doenitz 59, shows the approval of the suggestion made by the flag officer U-boats that ships who used their arms when stopped should be sunk. I read the entry of the 24th September, 1939. It is on the bottom under Figure 4:

"Based on the Fuehrer's approval, Groups and BdU received the following order:

"Against all merchant vessels using wireless when ordered to stop, force of arms should be employed. They are subject to seizure or sinking. Rescue of crew is advised."

THE PRESIDENT: The Tribunal will adjourn).

(The Tribunal adjourned until May 11, 1946, at 1000 hours).